MONTANA

CODE

ANNOTATED

1991

MONTANA CODE ANNOTATED

Adopted by Chapter 1, Laws of 1979

STATE LAW LIBRARY
SEP 21 1991
OF MONTANA

Gregory J. Petesch

Code Commissioner
&
Director of Legal Services

Staff Attorneys

Bart Campbell, Legal Researcher
Valencia Lane
John MacMaster
Doug Sternberg, Paralegal

Lee Heiman
Eddye McClure
David Niss

Indexers

Nadine E. Wallace

Tracy Wortman

Director Legislative Services
Hank Trenk

Support Services

Operations Bureau Chief
Marilynn Novak

Copy Editors
Sally Bush-Arrigo
Carol Ann Jacobsen
Mary Ellen Randall

Data Entry
Ellen Garrity
Donna Grace
Kevin Hayes
Ann Patten
Patricia Sternberg

Distribution
Kathy Thompson

Programmer
Connie Dixon
Tom Mulvaney

Proofreaders
Martin Baumann
Phyllis Cote
JoAnn Meredith

Typesetting
Kevin Hayes
Lee Heiman
Ann Patten

Published by
Montana Legislative Council
Room 138, State Capitol
Helena, MT 59620
Telephone (406) 444-3064

Printed and Bound by
Eastwood Printing and Publishing Co.
2901 Blake St.
Denver, CO 80205
Telephone (303)296-1905

Copyright
© 1978, 1979, 1981, 1983, 1985, 1987, 1989, 1991
by
The State of Montana

MONTANA CODE ANNOTATED
1991

STATE LAW LIBRARY
SEP 21 1991
OF MONTANA

CONTENTS

Volume 1
Preface
CONSTITUTION

Titles
1. General Laws and Definitions
2. Government Structure and Administration
3. Judiciary, Courts
4. Reserved
5. Legislative Branch
6. Reserved

Volume 2

Titles
7. Local Government
8 and 9. Reserved

Volume 3

Titles
10. Military Affairs and Disaster and Emergency Services
11 and 12. Reserved
13. Elections
14. Reserved
15. Taxation
16. Alcohol and Tobacco
17. State Finance
18. Public Contracts

Volume 4

Titles
19. Public Retirement Systems
20. Education
21. Reserved
22. Libraries, Arts, and Antiquities
23. Parks, Recreation, Sports, and Gambling
24. Reserved
25. Civil Procedure
26. Evidence

Volume 5

Titles
27. Civil Liability, Remedies, and Limitations
28. Contracts and Other Obligations
29. Reserved
30. Trade and Commerce
31. Credit Transactions and Relationships
32. Financial Institutions

Volume 6

Titles
33. Insurance and Insurance Companies
34. Reserved
35. Corporations, Partnerships, and Associations
36. Reserved

Volume 7

Titles
37. Professions and Occupations
38. Reserved
39. Labor
40. Family Law
41. Minors
42 and 43. Reserved

Volume 8

Titles
44. Law Enforcement
45. Crimes
46. Criminal Procedure
47 and 48. Reserved
49. Human Rights
50. Health and Safety
51. Reserved
52. Family Services
53. Social Services and Institutions
54-59. Reserved

Volume 9

Titles
60. Highways and Transportation
61. Motor Vehicles
62-66. Reserved
67. Aeronautics
68. Reserved
69. Public Utilities and Carriers
70. Property
71. Mortgages, Pledges, and Liens

Volume 10

Titles
72. Estates, Trusts, and Fiduciary Relationships
73 and 74. Reserved
75. Environmental Protection
76. Land Resources and Use
77. State Lands
78 and 79. Reserved

Volume 11

Titles
80. Agriculture
81. Livestock
82. Minerals, Oil, and Gas
83 and 84. Reserved
85. Water Use
86. Reserved
87. Fish and Wildlife
88 and 89. Reserved
90. Planning, Research, and Development
91-99. Reserved

INDEX

TITLE 44

LAW ENFORCEMENT

Ch.
1. Highway Patrol.
2. Investigation, Communication, and Identification.
3. Montana Forensic Science System Act.
4. Miscellaneous Functions of Department of Justice.
5. Criminal Justice Information.
Chapters 6 through 9 reserved.
10. Law Enforcement Academy.
11. Mutual Assistance — Rights of Assisting Officers.
12. Seizures Related to Controlled Substances.
13. Special Law Enforcement Assistance Funding.

CHAPTER 1

HIGHWAY PATROL

Part 1 — General Provisions

44-1-101. Creation of highway patrol.
44-1-102. General duties of department of justice.
44-1-103. Authority to make rules.
44-1-104. Duty to furnish governor with transportation.
44-1-105. Department of justice to furnish equipment.
44-1-106. Authority of department of justice to dispose of equipment.

Part 2 — Highway Patrol Chief

44-1-201. Appointment and tenure.
44-1-202. Qualifications.
44-1-203. Salary and expenses.

Part 3 — Powers and Duties of Chief Relating to Patrol Officers

44-1-301. General supervisory powers.
44-1-302. Powers relating to supervisory personnel.
44-1-303. Duties.

Part 4 — Appointment of Patrol Officers

44-1-401. Qualifications of patrol officers.
44-1-402. Appointment of supervisory personnel.
44-1-403. Repealed.
44-1-404. Status of replacements for patrol officers who enter the armed forces.

Part 5 — Salaries and Expenses

44-1-501. Payment of expenses.
44-1-502. Repealed.

44-1-503. Salary upon permanent appointment.
44-1-504 through 44-1-510 reserved.
44-1-511. Payment of salary benefit to officers injured in performance of duty.
44-1-512. Determination of eligibility for salary benefit.
44-1-513. Periodic medical examinations — waiver of right to salary benefit.
44-1-514. Discontinuation of salary benefit when retirement allowance granted.
44-1-515. Assignment to light duty or another position within department of justice.
44-1-516. Effect on probationary status.
44-1-517. Subrogation.
44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit.

Part 6 — Probationary Status and Tenure

44-1-601. Probationary training and service — patrol officers.
44-1-602. Probationary training and service — supervisory personnel.
44-1-603 through 44-1-610 reserved.
44-1-611. Tenure.
44-1-612. Cause for suspension, demotion, or discharge.

Part 7 — Disciplinary Action—Preliminary Procedure

44-1-701. Authority of department of justice to suspend or demote.
44-1-702. Preferring charges.
44-1-703. When charges dismissed.
44-1-704. When department of justice to order hearing.
44-1-705. Suspension pending hearing and decision.

Part 8 — Disciplinary Action Hearing and Decision

44-1-801. Notice of hearing.
44-1-802. Authority of department of justice — conduct of hearing.
44-1-803. Rights of accused.
44-1-804. Rendering and filing of decision.
44-1-805. Reinstatement and backpay upon exoneration.
44-1-806. Disciplinary action.
44-1-807. Length of suspension.
44-1-808. Demotion pay status.

Part 9 — Disciplinary Action—Appeal to Court

44-1-901. Right to appeal.
44-1-902. Action by court.
44-1-903. Reinstatement and backpay upon reversal or modification.
44-1-904 through 44-1-909 reserved.
44-1-910. Waiver.

Part 10 — Jurisdiction of Patrol Officers

44-1-1001. Offenses for which patrol officers may make arrests.
44-1-1002. No authority in labor disputes.
44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles.
44-1-1004. Authority concerning livestock or livestock products in transit.
44-1-1005. Motor carriers safety — enforcement — violations.

Part 11 — Procedure for Arrests

44-1-1101. Duty of patrol officer upon making an arrest.
44-1-1102. Procedure when patrol officer accepts bail.
44-1-1103. Check in lieu of cash.

Chapter Cross-References
Code of Ethics, Title 2, ch. 2, part 1.
Local government law enforcement, Title 7, ch. 32.
Definition of peace officer, 45-2-101.
Obstructing a peace officer, 45-7-302.
Highway safety, Title 61, ch. 2.
Qualification as driver examiners, 61-5-101.

Part 1

General Provisions

Part Cross-References
Department of Justice to administer law and make rules, 61-6-105.

44-1-101. Creation of highway patrol. There is hereby created a "Montana highway patrol" under the control and supervision of the department of justice.

History: En. Sec. 1, Ch. 199, L. 1943; R.C.M. 1947, 31-101; amd. Sec. 1, Ch. 503, L. 1985.

44-1-102. General duties of department of justice. The department of justice shall provide for clerical help, for the maintenance of the patrol, and for the employment and supervision of the patrol in conformity with the provisions of this chapter.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References
Department of Justice to administer laws and make rules, 61-6-105.

44-1-103. Authority to make rules. The department of justice may make, promulgate, and amend rules which prescribe procedures and practice requirements of the Montana highway patrol.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

Cross-References
Department of Justice to administer laws and make rules, 61-6-105.

44-1-104. Duty to furnish governor with transportation. The department of justice shall furnish the governor with automobile transportation upon his request, provided that such transportation shall be limited to travel and transportation of the governor while on official business of the state.

History: En. Sec. 3, Ch. 199, L. 1943; amd. Sec. 1, Ch. 55, L. 1945; amd. Sec. 1, Ch. 245, L. 1971; R.C.M. 1947, 31-103(part); amd. Sec. 1, Ch. 503, L. 1985.

44-1-105. Department of justice to furnish equipment. The department of justice shall furnish patrol officers with automobiles equipped and fitted with a distinctive siren and a particularly designated light for use at night. The department shall furnish all patrol officers with uniforms and equipment necessary for the performance of their respective duties, with the approval of the captain of their respective districts. Any such equipment and uniforms shall remain the property of the state of Montana.

History: **En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.**

Cross-References

Applicability of motor pool provisions, 2-17-411.

44-1-106. Authority of department of justice to dispose of equipment. The department of justice shall have authority to destroy, sell, or dispose of any and all obsolete equipment, uniforms, or parts of obsolete equipment or uniforms. Any money received from the sale of these items must be deposited into the state treasury in the fund and to the credit of the accounting entity from which it was originally purchased.

History: **En. Sec. 6, Ch. 199, L. 1943; amd. Sec. 1, Ch. 31, L. 1955; R.C.M. 1947, 31-106(part); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 529, L. 1991.**

Compiler's Comments

1991 Amendment: Near middle of second sentence, after "state", substituted "treasury in the fund and to the credit of the accounting entity from which it was originally purchased" for "general fund"; and made minor changes in style. Amendment effective July 1, 1991.

Cross-References

Disposal of surplus property, 18-4-221 through 18-4-226, 18-4-231 through 18-4-234; Title 18, ch. 6.

Part 2

Highway Patrol Chief

Part Cross-References

Chief of patrol defined, 61-1-302.

44-1-201. Appointment and tenure. The attorney general shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth.

History: **En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).**

Cross-References

State Commissioner on Vehicle Equipment Safety Commission, 61-2-204.

44-1-202. Qualifications. The person named as chief shall have been a continuous resident of Montana for at least 5 years.

History: **En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).**

44-1-203. Salary and expenses. The chief shall receive a salary fixed by the attorney general within the limits of the legislative appropriation for such purpose and travel expenses, as provided for in 2-18-501 through 2-18-503.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part).

Part 3

Powers and Duties of Chief Relating to Patrol Officers

44-1-301. General supervisory powers. The chief shall have direct control and supervision of all patrol officers, subject to the approval of the attorney general.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 1, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

44-1-302. Powers relating to supervisory personnel. The duties and jurisdiction of the supervisory personnel shall be outlined and defined by and under the control of the chief.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 2, Ch. 146, L. 1979.

44-1-303. Duties. The chief, with the approval of the attorney general and within the limits of any appropriation made available for such purposes, shall:

(1) designate the authority and responsibility in each rank, grade, and position;

(2) formulate standards, policies, and qualifications in the selection of recruit patrol officers;

(3) prescribe the official uniform of the Montana highway patrol;

(4) station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

(5) charge against each employee the value of property of the state lost or destroyed through the carelessness or neglect of such employee;

(6) discharge, demote, or temporarily suspend after hearing, as provided in parts 7 and 8 of this chapter, any patrol officer of the department;

(7) have purchased or otherwise acquired by the purchasing department of the state motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol.

History: En. Sec. 4, Ch. 199, L. 1943; amd. Sec. 1, Ch. 102, L. 1957; amd. Sec. 1, Ch. 173, L. 1967; amd. Sec. 15, Ch. 439, L. 1975; amd. Sec. 3, Ch. 343, L. 1977; R.C.M. 1947, 31-104(part); amd. Sec. 3, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

State property purchases, Title 18, ch. 1, 4, and 5.

Authority of Department of Justice to suspend, demote, or reprimand, 44-1-701.

Chief as Commissioner on Vehicle Equipment Safety Commission, 61-2-204.

Part 4

Appointment of Patrol Officers

44-1-401. Qualifications of patrol officers. Patrol officers shall possess the following qualifications:

(1) sound and active physical and mental condition;
(2) good moral character;
(3) residency in Montana;
(4) having passed a satisfactory test in the operation of automobiles; and
(5) citizenship in the United States.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(3); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 414, L. 1991.

Compiler's Comments

1991 Amendment: In (3), after "Montana", deleted "for at least 1 year immediately prior to appointment"; in (5), after "United States", deleted "and state of Montana"; and made minor change in style. Amendment effective April 15, 1991.

Cross-References

Definition of highway patrol officer, 61-1-305.

44-1-402. Appointment of supervisory personnel. Supervisory personnel shall be selected from the patrol officers by the chief. The chief shall designate supervisory personnel, including but not limited to captains, lieutenants, sergeants, and patrol officers, in such numbers as necessary but within the limits of the legislative appropriation made available for such purposes.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(part); amd. Sec. 4, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

44-1-403. Repealed. Sec. 2, Ch. 414, L. 1991.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(b); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 102, Ch. 370, L. 1987.

44-1-404. Status of replacements for patrol officers who enter the armed forces. Patrol officers filling vacancies caused by the incumbents' entrance into the armed forces of the United States shall, on the return of the incumbents, be placed in the patrol reserve without pay, except that they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrol officers shall be used for future replacements in the permanent patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(1)(c); amd. Sec. 1, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Leave of absence of public employee attending training camp, 10-1-604.

Reemployment of public employee upon completion of service, 10-2-221.

Part 5

Salaries and Expenses

Part Cross-References

Highway Patrol Officers' Retirement System, Title 19, ch. 6.

44-1-501. Payment of expenses. All expenses of the highway patrol shall be paid out of the transportation department's account in the state special revenue fund.

History: En. Sec. 1, Ch. 285, L. 1971; R.C.M. 1947, 31-105.1; amd. Sec. 2, Ch. 7, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 4, Ch. 20, Sp. L. June 1986; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendment: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Highway funds — state funds, Title 60, ch. 3, part 2.

44-1-502. Repealed. Sec. 2, Ch. 363, L. 1987.

History: En. 31-105.2 by Sec. 1, Ch. 221, L. 1977; R.C.M. 1947, 31-105.2.

44-1-503. Salary upon permanent appointment. In the event that a probationary patrol officer is appointed permanently, he shall, at the time of such appointment, receive the base salary of a patrol officer.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(2); amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Probationary status and tenure, Title 44, ch. 1, part 6.

44-1-504 through 44-1-510 reserved.

44-1-511. Payment of salary benefit to officers injured in performance of duty. (1) A member of the highway patrol who, in the performance of his duties, suffers an injury which necessitates medical or other remedial treatment and which renders him unable to perform his duties shall be paid the full amount of his regular salary as a salary benefit until one of the following occurs:

(a) He ceases to be disabled.

(b) A period of 1 year elapses after the date of the injury.

(c) Although disabled, he is ordered returned to light duty by the chief of the highway patrol.

(d) Although disabled, he accepts a transfer position within the department of justice.

(e) He waives his benefit.

(2) The department of justice shall set off the amount of any workers' compensation award actually received against the salary benefit payable under this section.

History: En Sec. 1, Ch. 317, L. 1979.

Cross-References

Workers' compensation, Title 39, ch. 71.

Reimbursement for costs of law enforcement assistance, 44-11-202.

Crime victims reparations, Title 53, ch. 9, part 1.

44-1-512. Determination of eligibility for salary benefit. (1) The highway patrol chief shall determine whether an injury incurred by an officer was incurred in the performance of his duties and whether an injury so incurred resulted in a disability.

(2) In determining the nature and extent of an officer's injuries and the extent of any recovery, the chief shall seek and consider the medical opinion of a qualified physician who has examined the injured officer. The chief may seek a second medical opinion in his discretion.

History: En Sec. 2, Ch. 317, L. 1979.

44-1-513. Periodic medical examinations — waiver of right to salary benefit. (1) The chief may appoint a physician to examine the officer from time to time. If, in the physician's opinion, the injured officer has sufficiently recovered to perform light duties or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit a medical examination under subsection (1) or 44-1-512(2) waives any salary benefit to which he might otherwise be entitled under 44-1-511.

History: En Sec. 3, Ch. 317, L. 1979.

44-1-514. Discontinuation of salary benefit when retirement allowance granted. Payment of a salary benefit under 44-1-511 shall be discontinued if the injured officer is disabled for an indefinite period and is granted a disability retirement allowance under Title 19, chapter 6. If an officer is indefinitely disabled and does not apply for a disability retirement allowance, application therefor may be made by the chief.

History: En Sec. 4, Ch. 317, L. 1979.

44-1-515. Assignment to light duty or another position within department of justice. (1) The chief, taking into consideration the medical opinions he has received, may determine at any time that an injured officer is able to perform light police duty consistent with his status as a law enforcement officer and may order the officer assigned to such light duty. If the officer refuses to perform the light duty, payment of the salary benefit under 44-1-511 shall be discontinued.

(2) The chief may order an injured officer transferred from the highway patrol to another position within the department of justice. An officer may decline to accept a transfer under this subsection with no loss of salary benefit.

History: En Sec. 5, Ch. 317, L. 1979.

44-1-516. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

History: En Sec. 6, Ch. 317, L. 1979.

Cross-References

Probationary status and tenure, Title 44, ch. 1, part 6.

44-1-517. Subrogation. The state has a cause of action for reimbursement of sums it has paid to an officer as a salary benefit and for medical treatment and examinations against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the state.

History: En Sec. 7, Ch. 317, L. 1979.

Cross-References

Recovery against governmental entity, 2-9-305.

44-1-518. Contribution for retirement — length of service credit — transfer of retirement contributions and length of service credit. (1) When an officer receives compensation under 44-1-511, the officer's contribution for retirement under 19-6-402 must be paid on the compensation received under 44-1-511 and the state's contribution for retirement under 19-6-404 must be paid on the compensation received under 44-1-511.

(2) The time for which contributions are paid under 44-1-511 shall be credited to the length of service computed for retirement purposes under 19-6-302.

(3) When a disabled officer who qualifies for benefits under 44-1-511 accepts a transfer under 44-1-515 to a nonhighway patrol position within the department of justice that is covered under the Public Employees' Retirement System Act, all of the officer's length of service credited with the Montana

patrol officers' retirement system shall be transferred to the public employees' retirement system in the officer's credit and the officer's accumulated contributions and the state's adjusted contributions, with accrued interest, credited to the officer in the Montana highway patrol officers' retirement account shall be transferred to the public employees' retirement account in the officer's credit. The state's "adjusted contributions" means an amount equal to the amount that would have been contributed by the state had the transferred service been employment covered under the public employees' retirement system.

History: En Sec. 8, Ch. 317, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Public Employees' Retirement System, Title 19, ch. 3.

Part 6

Probationary Status and Tenure

Part Cross-References

Duties of Chief of Highway Patrol Bureau, 44-1-303.

44-1-601. Probationary training and service — patrol officers. A new patrol officer shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary patrol officer will automatically be discharged.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(a); amd. Sec. 3, Ch. 7, L. 1979; amd. Sec. 5, Ch. 146, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

44-1-602. Probationary training and service — supervisory personnel. All newly appointed supervisory personnel shall be placed under probationary training and service for a period of 6 months to 1 year. If the chief fails to recommend a permanent appointment by the end of the probationary period, the probationary supervisory personnel will automatically revert to their previous ranks without prejudice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(4)(b); amd. Sec. 4, Ch. 7, L. 1979; amd. Sec. 6, Ch. 146, L. 1979.

44-1-603 through 44-1-610 reserved.

44-1-611. Tenure. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrol officer, or any other rank under and pursuant to the provisions of this chapter, except as provided in 44-1-601 and 44-1-602, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided for one or more of the causes specified in 44-1-612.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(5); amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Duties of Department of Justice, 44-1-102.

44-1-612. Cause for suspension, demotion, or discharge. Cause for suspension, demotion, or discharge is:

(1) conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment;

(2) gross neglect of duty or willful violation or disobedience of orders or regulations;

(3) loitering about or entering places of ill fame or ill repute or in which illegal gambling is known to be conducted or to be in progress, except in the immediate discharge of duty;

(4) conduct unbecoming an officer;

(5) drinking intoxicating liquor while using state-owned cars or in uniform or being intoxicated in a public place;

(6) sleeping while on duty;

(7) incapacity or partial incapacity materially affecting ability to perform official duties;

(8) gross inefficiency in performing duties; or

(9) willful disobedience of rules adopted by the department of justice governing the conduct and discipline of members of the patrol.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(6); amd. Sec. 5, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Part 7

Disciplinary Action — Preliminary Procedure

Part Cross-References

Code of ethics, Title 2, ch. 2, part 1.

Duties of Department of Justice, 44-1-102.

Cause for suspension, demotion, or discharge, 44-1-612.

Withholding officer's salary for failure to provide information, 44-2-205.

44-1-701. Authority of department of justice to suspend or demote. When the department of justice has cause to believe that any member of the highway patrol has violated any of the grounds for suspension, demotion, or discharge, it may impose a suspension without pay for up to 10 days without filing charges and conducting a hearing under part 8.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(a); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 2, Ch. 713, L. 1991.

Compiler's Comments

1991 Amendment: At end, after "discharge", substituted "it may impose a suspension without pay for up to 10 days without filing charges and conducting a hearing under part 8" for "or his conduct has warranted reprimanding, it may suspend, demote, or reprimand the member".

Cross-References

Duties of Chief of Highway Patrol generally, 44-1-303.

44-1-702. Preferring charges. (1) The charge or charges against any member of the highway patrol shall be made in writing and signed and sworn to by the person making the charge or charges.

(2) The written charge or charges shall be filed with the department of justice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(a) thru (c); amd. Sec. 1, Ch. 503, L. 1985.

44-1-703. When charges dismissed. When charges are filed and the department of justice believes such charge or charges do not constitute grounds for suspension, demotion, or discharge, it shall dismiss such charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(e); amd. Sec. 1, Ch. 503, L. 1985.

44-1-704. When department of justice to order hearing. When charges are filed and the department of justice believes that such charge or charges constitute grounds for suspension, demotion, or discharge, it shall order a hearing to be had thereon before it and fix a time for such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(7)(d); amd. Sec. 1, Ch. 503, L. 1985.

44-1-705. Suspension pending hearing and decision. If the department of justice orders a hearing, the chief may suspend such patrol officer pending the rendition of the decision made in such case.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(8)(b); amd. Sec. 7, Ch. 146, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Part 8

Disciplinary Action Hearing and Decision

Part Cross-References
Duties of Department of Justice, 44-1-102.
Cause for suspension, demotion, or discharge, 44-1-612.

44-1-801. Notice of hearing. (1) The department of justice shall, at least 10 days before the time appointed for a hearing, serve written notice on the accused patrol officer, specifying the charge or charges filed and stating the name of the person or persons making the charge or charges.

(2) If the accused patrol officer is located within the state and his whereabouts is known, the service required by subsection (1) shall be made personally. If the accused patrol officer is located outside the state and his whereabouts is known, service may be made by mailing the written notice to his place of residence. If, at the time, the whereabouts of the accused patrol officer is unknown, service may be made upon him by mailing the written notice to him at his last-known place of residence in Montana.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(10); amd. Sec. 6, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

44-1-802. Authority of department of justice — conduct of hearing. (1) The department of justice shall be the authority to hear such charge or charges and render a decision and appropriate order.

(2) The department shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and, for those purposes, to issue subpoenas and cause the same to be served and executed in any part of the state.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(a), (11)(b); amd. Sec. 1, Ch. 503, L. 1985.

44-1-803. Rights of accused. The accused patrol officer shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf. He shall be entitled to be represented by counsel, at his own expense, at such hearing.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(c); amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 713, L. 1991.

Compiler's Comments

1991 Amendment: Near end, after "counsel", inserted "at his own expense".

44-1-804. Rendering and filing of decision. The department of justice shall, within 30 days after such hearing or within the additional time to which the accused patrol officer consents, render its decision in writing and file same in its office, with the chief, and with the patrol officer accused.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(11)(d); amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 4, Ch. 713, L. 1991.

Compiler's Comments

1991 Amendment: Increased time from 15 days to 30 days and after "hearing" inserted "or within the additional time to which the accused patrol officer consents".

44-1-805. Reinstatement and backpay upon exoneration. If after the hearing the department of justice finds that the charge or charges made against the patrol officer are not true, the department shall reinstate the accused patrol officer to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(b); amd. Sec. 7, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Reinstatement and backpay upon reversal or modification, 44-1-903.

44-1-806. Disciplinary action. If after a hearing the department of justice finds that any charge or charges made against the patrol officer are true, it may punish the offending party by suspension without pay, demotion, or discharge.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(12)(a); amd. Sec. 8, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 5, Ch. 713, L. 1991.

Compiler's Comments

1991 Amendment: Before "suspension" deleted "reprimand".

44-1-807. Length of suspension. A member under suspension shall be on leave without pay for a period not to exceed 30 days.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(a); amd. Sec. 9, Ch. 7, L. 1979.

44-1-808. Demotion pay status. In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(9)(b).

Cross-References

Reinstatement and backpay upon reversal or modification, 44-1-903.

Part 9

Disciplinary Action — Appeal to Court

44-1-901. Right to appeal. (1) A patrol officer who is suspended, demoted, or discharged has a right of appeal:

(a) to the district court in the county in which the claim arose or to the district court of Lewis and Clark County; or

(b) pursuant to the terms of a grievance procedure contained in a collective bargaining agreement if the officer is covered by a collective bargaining agreement.

(2) The appeal to the district court must be made within 10 days after the decision or determination of the department of justice.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(a), (13)(b); amd. Sec. 10, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 1, Ch. 225, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a) inserted reference to District Court of county in which the claim arose; inserted (1)(b) regarding right to appeal pursuant to a grievance procedure contained in a collective bargaining agreement; in (2), after "appeal", inserted "to the district court"; and made minor changes in style.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

44-1-902. Action by court. The district court shall review a decision or determination appealed pursuant to 44-1-901(1)(a) in a summary manner and render its decision within 90 days from the filing of the appeal.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(c); amd. Sec. 2, Ch. 225, L. 1991.

Compiler's Comments

1991 Amendment: Near middle, after "determination", inserted "appealed pursuant to 44-1-901(l)(a)"; and made minor changes in style.

44-1-903. Reinstatement and backpay upon reversal or modification. If the decision or determination of the department of justice is finally reversed or modified, the accused patrol officer must be reinstated in his position. Upon reinstatement, the department shall pay to the patrol officer any salary or wages withheld from him pending the determination of the charge or charges or take such action as may be directed by resolution of the grievance procedure or the court.

History: En. Sec. 5, Ch. 199, L. 1943; amd. Sec. 1, Ch. 187, L. 1951; amd. Sec. 1, Ch. 219, L. 1953; amd. Sec. 1, Ch. 268, L. 1955; amd. Sec. 1, Ch. 225, L. 1957; amd. Sec. 1, Ch. 109, L. 1959; amd. Sec. 1, Ch. 55, L. 1967; amd. Sec. 5, Ch. 188, L. 1975; amd. Sec. 1, Ch. 483, L. 1975; amd. Sec. 4, Ch. 343, L. 1977; R.C.M. 1947, 31-105(13)(d); amd. Sec. 11, Ch. 7, L. 1979; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 1, Ch. 217, L. 1989; amd. Sec. 3, Ch. 225, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence, after "modified", deleted "by the district court" and near end of second sentence, after "directed by", inserted "resolution of the grievance procedure or".

Cross-References

Reinstatement and backpay upon exoneration, 44-1-805.

44-1-904 through 44-1-909 reserved.

44-1-910. Waiver. A patrol officer may waive in writing his rights under Title 44, chapter 1, parts 7 and 8, and accept discipline considered appropriate by the department of justice.

History: En. Sec. 1, Ch. 713, L. 1991.

Part 10

Jurisdiction of Patrol Officers

Part Cross-References

Enforcement of provisions respecting use of snowmobiles, 23-2-641.

Enforcement of motor vehicle statutes, 61-3-602.

Motor vehicle accidents and accident reports, Title 61, ch. 7.

Traffic regulation, Title 61, ch. 8.

Obedience to highway patrol officer, 61-9-105.

Records kept by Department of Justice, 61-11-102.

Patrol officer acting as firewarden, 77-5-104.

44-1-1001. Offenses for which patrol officers may make arrests. (1) The highway patrol chief and all patrol officers may make arrests for the offenses listed in subsection (2) under the following circumstances:

(a) the offense is committed in the presence of the chief or any patrol officer;

(b) the offense is committed in a rural district and a request for assistance is made by a peace officer; or

(c) the offense is committed in a city or town with a population of less than 2,500 and a request for assistance is made by a peace officer or the mayor of the city or town.

(2) Offenses for which arrests may be made under subsection (1) are:

(a) deliberate homicide;

(b) assault with a deadly weapon;

(c) arson;

(d) criminal mischief;

(e) burglary;

(f) theft;

(g) kidnapping;

(h) illegal transportation of narcotics; or

(i) violation of the Dyer Act regarding the transportation of stolen automobiles.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part); amd. Sec. 12, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Deliberate homicide, 45-5-102.
Assault, 45-5-201.
Aggravated assault, 45-5-202.
Kidnapping, 45-5-302.
Aggravated kidnapping, 45-5-303.
Criminal mischief, 45-6-101.
Negligent arson, 45-6-102.
Arson, 45-6-103.
Burglary, 45-6-204.
Theft, 45-6-301.
Criminal sale of dangerous drugs, 45-9-101.
Written reports of highway accidents, 61-7-109.

44-1-1002. No authority in labor disputes. Such highway patrol officers have no authority and are expressly forbidden to make arrests in labor disputes or to prevent violence in connection with strikes and may not perform any duties whatsoever in connection with labor disputes, strikes, or boycotts.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(part); amd. Sec. 1, Ch. 217, L. 1989.

44-1-1003. Offenses on highways, rest areas, and state highway properties adjacent to the highway or involving motor vehicles. Patrol officers are considered police officers for the purpose of making arrests for all offenses occurring on the highways, highway rest areas, state highway properties adjacent to the highway, or involving the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(2); amd. Sec. 1, Ch. 645, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Regulations governing arrest authorized, 7-32-4301.
Warrants generally, Title 46, ch. 6, part 2.
Arrest without warrant generally, Title 46, ch. 30, part 3.
Highways defined, 61-1-201, 61-1-202.
Authority of Department of Justice to cancel licenses, 61-5-201.
Reports of accidents on highways, 61-7-109.
"Ways of this state open to the public" — definition, 61-8-101.
Motor vehicle defined, 69-12-101.

44-1-1004. Authority concerning livestock or livestock products in transit. Patrol officers may stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products. If the patrol officers have good reason to believe that livestock or livestock products have been stolen, they may take possession of the same until the livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(3); amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Theft, 45-6-301.

Duties of stock inspectors and detectives concerning livestock or livestock products in transit, 81-1-202.

44-1-1005. Motor carriers safety — enforcement — violations. (1) The department of justice shall:

(a) adopt, by rule, standards for safety of operations of motor carriers, each of whom is considered to consent impliedly to reasonable safety inspections of its motor vehicles utilized in furtherance of its business as a motor carrier;

(b) provide standards for the safe operation of all motor vehicles used in commerce that exceed 26,000 pounds gross vehicle weight, except farm vehicles; and

(c) provide for the safe operation of vehicles of less than 26,000 pounds gross vehicle weight if they are used to transport passengers for hire or to transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with rules adopted by the department.

(2) Standards of safety adopted pursuant to subsections (1)(b) and (1)(c) must be the same as prescribed for motor carriers, and the same inspection standards and procedures apply.

(3) The highway patrol has responsibility for enforcement of standards adopted pursuant to subsection (1)(a). Inspection of a vehicle based in Montana may, at the request of the carrier, be made at the place of business or domicile of the vehicle owner or, if that is not a practicable inspection site, at a designated location and at a mutually agreeable time. After inspection, a vehicle found to conform to the standards adopted pursuant to subsection (1)(a) is entitled to certification and identification to exempt it from further safety inspection until the next required periodic inspection or until a nonconformity with standards is apparent. Nothing in this section prohibits the inspection of a motor vehicle as provided for by subsection (1)(a) at a safe location on a public road.

(4) The department shall cooperate with the department of transportation to assure minimum duplication and maximum coordination of enforcement effort.

(5) The department may designate and train civilian employees as inspectors within the motor carrier safety assistance program. Each civilian inspector is a peace officer whose jurisdiction is limited to enforcement of violations of chapters 5 and 9 of Title 61 and any standards adopted pursuant to

subsections (1) and (2) of this section. Each employee so designated as a peace officer may:

(a) issue citations and make arrests;

(b) issue summonses;

(c) accept bail;

(d) serve warrants of arrest;

(e) make reasonable inspections of cargo carried by commercial motor vehicles;

(f) make reasonable safety inspections of commercial motor vehicles; and

(g) require production of documents relating to the cargo, driver, routing, maintenance, or ownership of such vehicles.

(6) Violations of the standards adopted pursuant to subsection (1) are punishable as provided in 61-9-512.

History: En. Sec. 10, Ch. 199, L. 1943; amd. Sec. 1, Ch. 63, L. 1965; amd. Sec. 2, Ch. 280, L. 1977; amd. Sec. 46, Ch. 359, L. 1977; R.C.M. 1947, 31-110(4); amd. Sec. 13, Ch. 7, L. 1979; amd. Sec. 1, Ch. 226, L. 1981; amd. Sec. 1, Ch. 394, L. 1983; amd. Sec. 1, Ch. 503, L. 1985; amd. Sec. 4, Ch. 686, L. 1985; amd. Sec. 103, Ch. 370, L. 1987; amd. Sec. 1, Ch. 386, L. 1987; amd. Sec. 1, Ch. 226, L. 1991; amd. Sec. 3, Ch. 512, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 226 in (2) deleted second sentence providing that standards relating to drivers, other than drivers for motor carriers, do not apply to vehicles operated exclusively within a 200-mile radius of their work reporting location.

Chapter 512 substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

Cross-References

Vehicle equipment, Title 61, ch. 9.

Applicability of Title 61, chapter 9, 61-9-109.

Performance ability of brakes, 61-9-312.

Inspections by officers of Department of Justice, 61-9-501.

Owners and drivers to comply with inspection laws, 61-9-503.

Joint enforcement of motor carrier safety standards by Highway Patrol, Department of Transportation, 61-10-141.

Officers authorized to weigh vehicles and require removal of excessive loads, 61-10-141.

Display of permit, 61-10-142.

Confiscation — action by Commission, 61-10-143.

Motor carriers, Title 69, ch. 12.

Part 11

Procedure for Arrests

Part Cross-References

Arrest, Title 46, ch. 6.

Circumstances in which a peace officer may arrest, 46-6-210.

Bail, Title 46, ch. 9.

Obedience to highway patrol officer, 61-9-105.

44-1-1101. Duty of patrol officer upon making an arrest. Upon making an arrest, a patrol officer shall:

(1) deliver the offender to the nearest justice of the peace during office hours or to the county jail;

(2) give the offender a summons describing the nature of the offense with instructions thereon for the offender to report to the nearest justice of the peace; or

(3) accept bail determined pursuant to Title 46, chapter 9, part 3.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 14, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Regulations governing arrest authorized, 7-32-4301.

Initial appearance of arrested person, Title 46, ch. 7.

44-1-1102. Procedure when patrol officer accepts bail. If the patrol officer accepts bail, he shall give a signed receipt to the offender, setting forth the amount received. The patrol officer shall then deliver the bail money to the justice of the peace before whom the offender is to appear, and the justice of the peace shall give a receipt to the patrol officer for the amount of bail money delivered. After the filing of the complaint and the appearance of the defendant, the justice of the peace shall assume jurisdiction and may set and accept further bail bond.

History: En. Sec. 12, Ch. 199, L. 1943; R.C.M. 1947, 31-112(part); amd. Sec. 15, Ch. 7, L. 1979; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Bail schedule for minor offenses — acceptance by peace officer, 46-9-302.

Acceptance of bail by peace officer, 46-9-302.

44-1-1103. Check in lieu of cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrol officers or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash provided that:

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents identifying him.

(2) If a check is offered in lieu of cash, the highway patrol officer or other authorized agent who accepts the check is not liable in the case of nonpayment.

(3) A person who writes a check in lieu of cash bond which is returned for insufficient funds is subject to prosecution under 45-6-316, and obtaining bond constitutes securing services for the purposes of that section.

History: En. 31-112.1 by Sec. 1, Ch. 295, L. 1977; R.C.M. 1947, 31-112.1; amd. Sec. 1, Ch. 217, L. 1989.

Cross-References

Issuing bad checks, 45-6-316.

Furnishing bail, Title 46, ch. 9, part 4.

CHAPTER 2

INVESTIGATION, COMMUNICATION, AND IDENTIFICATION

Part 1 — Criminal Investigation

44-2-101. Repealed.
44-2-102. Repealed.

44-2-103. Repealed.
44-2-104 through 44-2-110 reserved.
44-2-111. Definition of "agent".
44-2-112. Repealed.
44-2-113. Qualifications of agents.
44-2-114. Personnel covered by PERS.
44-2-115. Powers and duties of agents.
44-2-116. Cooperation of state agencies.

Part 2 — State System of Criminal Identification

44-2-201. Establishment of state system.
44-2-202. Assistance to and instruction of local officers.
44-2-203. Repealed.
44-2-204. Repealed.
44-2-205. Withholding of salary of officer who fails to provide information.
44-2-206. Cooperation with FBI and other states.

Part 3 — Teletypewriter Communications System

44-2-301. Establishment — inclusion of other state agencies.
44-2-302. Powers of attorney general.
44-2-303. Federal cost sharing.
44-2-304. Report by attorney general.
44-2-305 through 44-2-310 reserved.
44-2-311. Participation by local and other agencies.
44-2-312. Authorization of monthly operational charge.
44-2-313. Payment of charge.
44-2-314. Use of moneys — records.
44-2-315. Removal from network upon nonpayment.
44-2-316. Assessment for personnel.

Part 4 — Dental Records Missing Persons and Unidentified Bodies

44-2-401. Missing persons — dental records.
44-2-402. Dental examination — records — report.

Part 5 — Missing Children

44-2-501. Short title.
44-2-502. Definitions.
44-2-503. Missing children information program.
44-2-504. Reports to missing children information program.
44-2-505. Duties of law enforcement authority.
44-2-506. List of missing Montana school children.
44-2-507. Notice to parents of children absent from school.
44-2-508 through 44-2-510 reserved.
44-2-511. School enrollment procedures to aid identification of missing children.

Part 6 — Escape or Release From Confinement—Notification

44-2-601. Notification of escape or release from confinement.

Part 7 — Drug Abuse Resistance Education (D.A.R.E.)

44-2-701. Montana drug abuse resistance education trust fund account — administration by board of crime control.
44-2-702. Montana drug abuse resistance education program.
44-2-703. Gifts and grants to program.
44-2-704. Program costs.
44-2-705. Restriction on use of funds.

Chapter Cross-References

Statewide emergency telephone 9-1-1 system, Title 10, ch. 4.

Private investigators and patrol officers, Title 37, ch. 60.

Automatic telephone alarm systems, 37-60-408.

Part 1

Criminal Investigation

Part Cross-References

Investigative procedures, Title 46, ch. 4.

44-2-101. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(1).

44-2-102. Repealed. Sec. 14, Ch. 503, L. 1985.

History: En. Sec. 7, Ch. 176, L. 1967; amd. Sec. 7, Ch. 219, L. 1971; R.C.M. 1947, 82-420.

44-2-103. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 4, Ch. 176, L. 1967; amd. Sec. 4, Ch. 219, L. 1971; R.C.M. 1947, 82-417.

44-2-104 through 44-2-110 reserved.

44-2-111. Definition of "agent". As used in this part, "agent" means a person appointed by the attorney general to conduct criminal investigations and perform related duties within the department of justice.

History: En. Sec. 2, Ch. 176, L. 1967; amd. Sec. 2, Ch. 219, L. 1971; R.C.M. 1947, 82-415; amd. Sec. 5, Ch. 503, L. 1985; amd. Sec. 1, Ch. 280, L. 1991.

Compiler's Comments

1991 Amendment: After "appointed" inserted "by the attorney general" and at end substituted "department of justice" for "attorney general's office".

Cross-References

Definition of agent, 28-10-101.

44-2-112. Repealed. Sec. 4, Ch. 280, L. 1991.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(2).

44-2-113. Qualifications of agents. Each agent must be a person qualified by experience, training, and high professional competence in criminal investigation. Each agent shall meet all the requirements of 7-32-303.

History: En. Sec. 1, Ch. 176, L. 1967; amd. Sec. 1, Ch. 219, L. 1971; R.C.M. 1947, 82-414(3); amd. Sec. 2, Ch. 280, L. 1991.

Compiler's Comments

1991 Amendment: Substituted second sentence regarding agent requirements for former second sentence that read: "Qualifications shall be equal to those of similarly assigned federal bureau of investigation personnel".

44-2-114. Personnel covered by PERS. All agents and assisting personnel shall be covered by the public employees' retirement system.

History: En. Sec. 5, Ch. 176, L. 1967; amd. Sec. 5, Ch. 219, L. 1971; R.C.M. 1947, 82-418.

Cross-References

Public Employees' Retirement System, Title 19, ch. 3.

44-2-115. Powers and duties of agents. An agent appointed by the attorney general pursuant to this part is a peace officer and:

(1) shall provide investigative assistance to city, county, state, and federal law enforcement agencies at their request in accordance with rules adopted by the department of justice;

(2) shall have concurrent jurisdiction with local law enforcement agencies to investigate offenses involving dangerous drugs, as provided in Title 45, chapter 9, and violations that constitute organized criminal activity;

(3) shall investigate gambling activities in this state as provided in 23-5-113;

(4) shall investigate any apparent violations of penal statutes disclosed by an audit of a state agency by the legislative auditor;

(5) shall investigate apparent violations of penal statutes referred by the state workers' compensation mutual insurance fund; and

(6) shall assist whenever possible any law enforcement school held in the state for law enforcement officers when requested.

History: En. Sec. 3, Ch. 176, L. 1967; amd. Sec. 3, Ch. 219, L. 1971; R.C.M. 1947, 82-416; amd. Sec. 16, Ch. 7, L. 1979; amd. Sec. 3, Ch. 280, L. 1991.

Compiler's Comments

1991 Amendment: In introductory clause, after "agent", inserted "appointed by the attorney general pursuant to this part is a peace officer and"; in (1), at beginning, substituted "provide investigative assistance to" for "assist" and after "request" substituted "in accordance with rules adopted by the department of justice" for "by providing expert and immediate aid in investigation and solution of felonies committed in the state"; inserted (2) regarding concurrent jurisdiction; inserted (3) requiring investigation of gambling activities; inserted (4) requiring investigation of apparent violations disclosed by audit; inserted (5) requiring investigation of apparent workers' compensation violations; in (6), after "assist", inserted "whenever possible"; deleted former (3) that read: "(3) act as a peace officer, as defined in the laws of Montana, when engaged in assisting or acting under the direction of city, county, state, and federal law enforcement agencies as provided in this section"; and made minor changes in style.

Cross-References

Peace officer defined, 1-1-207, 45-2-101.

Law Enforcement Academy, Title 44, ch. 17.

44-2-116. Cooperation of state agencies. All state departments and agencies shall cooperate with such agents and assisting personnel in providing transportation and educational and laboratory facilities for their use when so requested.

History: En. Sec. 6, Ch. 176, L. 1967; amd. Sec. 6, Ch. 219, L. 1971; R.C.M. 1947, 82-419.

Part 2

State System of Criminal Identification

44-2-201. Establishment of state system. The department of justice shall cooperate with and assist sheriffs, chiefs of police, and other law enforcement officers in the establishment of a complete state system of criminal identification.

History: En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part); amd. Sec. 17, Ch. 7, L. 1979.

44-2-202. Assistance to and instruction of local officers. The department shall assist and, when practicable, instruct sheriffs, chiefs of police, and other law enforcement officers in establishing efficient local bureaus of identification in their districts and in making them proficient in procuring and maintaining fingerprint records.

History: En. Sec. 37, Ch. 199, L. 1965; R.C.M. 1947, 80-2006; amd. Sec. 18, Ch. 7, L. 1979.

44-2-203. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 33, Ch. 199, L. 1965; R.C.M. 1947, 80-2002(part).

44-2-204. Repealed. Sec. 27, Ch. 525, L. 1979.

History: En. Sec. 34, Ch. 199, L. 1965; R.C.M. 1947, 80-2003.

44-2-205. Withholding of salary of officer who fails to provide information. The department shall report to the attorney general the failure of any officer to provide information as required by law. After an investigation of the report, the attorney general may order the proper disbursing officer to withhold payment of the salary of the officer who failed to provide the information until the information is given to the department.

History: En. Sec. 35, Ch. 199, L. 1965; R.C.M. 1947, 80-2004.

Cross-References

Discipline of highway patrol members, Title 44, ch. 1, parts 7 through 9.

44-2-206. Cooperation with FBI and other states. The department shall cooperate with identification bureaus in other states and with the federal bureau of investigation to develop and carry on a complete interstate and international system of criminal identification and investigation.

History: En. Sec. 36, Ch. 199, L. 1965; R.C.M. 1947, 80-2005.

Part 3

Teletypewriter Communications System

Part Cross-References

Criminal justice information, Title 44, ch. 5.

44-2-301. Establishment — inclusion of other state agencies. The attorney general is hereby authorized to establish a permanent law enforcement teletypewriter communications system for the purpose of connecting federal, state, county, and city law enforcement agencies by teletype. He is further authorized to bring into the network, should he and they so desire, any department of Montana state government or its subdivisions outside of law enforcement activities when, in the opinion of the attorney general and the state department or subdivision, such inclusion will materially aid the law enforcement agencies of the state of Montana or its subdivisions in the fight against crime.

History: En. Sec. 1, Ch. 1, Ex. L. 1967; amd. Sec. 1, Ch. 145, L. 1969; R.C.M. 1947, 82-3901.

44-2-302. Powers of attorney general. To carry out the provisions of this part, the attorney general is authorized to:

(1) purchase, lease, or otherwise acquire facilities and equipment necessary to accomplish the purposes of this part;

(2) employ such personnel as may be necessary to operate such facilities within the framework of any funds budgeted or prorated on a charge basis against participating agencies as herein identified.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(a), (b).

Cross-References

Duties of Attorney General, 2-15-501.

44-2-303. Federal cost sharing. The attorney general shall contact federal law enforcement agencies or officials relative to federal cost sharing in the teletypewriter communications system, and if such funds are available from federal sources, the attorney general may sign agreements with the federal agencies. Any federal funds received in any biennium for which Montana funds have been appropriated shall be deposited in the system's account and shall be used, if at all possible, to reduce the spending of money appropriated from the general fund.

History: En. Sec. 5, Ch. 1, Ex. L. 1967; amd. Sec. 5, Ch. 145, L. 1969; R.C.M. 1947, 82-3905; amd. Sec. 19, Ch. 7, L. 1979.

44-2-304. Report by attorney general. The attorney general shall prepare a report in detail covering the operations of the communications network, the accounting of all moneys received and expended, and the need to expand or improve the system. As provided in 5-11-210, he shall submit the report to the legislature.

History: En. Sec. 6, Ch. 1, Ex. L. 1967; amd. Sec. 6, Ch. 145, L. 1969; R.C.M. 1947, 82-3906; amd. Sec. 35, Ch. 112, L. 1991.

Compiler's Comments

1991 Amendment: Substituted second sentence regarding submission of reports under 5-11-210 for former sentence that read: "He shall submit such report to the appropriations committee of every legislature at the time funds are requested for the administration of this part". Amendment effective March 20, 1991.

44-2-305 through 44-2-310 reserved.

44-2-311. Participation by local and other agencies. Any county, city, or other law enforcement agency may, with the approval of the attorney general, connect to the system and participate in it upon payment of or agreement to pay those costs established by the department of justice.

History: En. Sec. 4, Ch. 1, Ex. L. 1967; amd. Sec. 4, Ch. 145, L. 1969; R.C.M. 1947, 82-3904.

44-2-312. Authorization of monthly operational charge. The attorney general is hereby authorized to establish a monthly operational charge for the teletypewriter communications network, exclusive of personnel services, and such charge shall be prorated among all the various agencies using the system.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-313. Payment of charge. Such charge shall be billed monthly to the agencies. Payments made as a result of the billing shall be remitted to the attorney general and deposited by him in a special account in the state treasury.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part); amd. Sec. 20, Ch. 7, L. 1979.

44-2-314. Use of moneys — records. The state auditor is hereby authorized to draw warrants on this account upon request of the attorney general when such moneys are needed to pay any of the costs of keeping the system operative. A strict accounting shall be kept of all receipts and disbursements and shall be available as a matter of record to members of the appropriations committee of the house of representatives as they may require in the performance of their duties.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-315. Removal from network upon nonpayment. Law enforcement agencies, other than the state of Montana or any of its subdivisions, that become 90 days delinquent in payment of any fees approved and assessed hereunder shall be notified that they will be removed from the network, and the department of justice shall take the necessary steps to carry out this provision.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(part).

44-2-316. Assessment for personnel. A special prorated assessment shall be made against all participating agencies for personnel necessary to assist in the operation at one central location or key point at which there is a federal intertie. This assessment shall be made monthly the same as the operational charge. It shall be transmitted, deposited, and drawn by warrant as are other warrants as provided in 44-2-312 through 44-2-315, except that the assessment may not be levied against the one central station for which the assessment is made.

History: En. Sec. 3, Ch. 1, Ex. L. 1967; amd. Sec. 3, Ch. 145, L. 1969; R.C.M. 1947, 82-3903(d); amd. Sec. 21, Ch. 7, L. 1979.

Part 4

Dental Records
Missing Persons and Unidentified Bodies

44-2-401. Missing persons — dental records. (1) Any person who reports a missing person to a police or sheriff's department or other law enforcement authority must be given a form, supplied by the department of justice, that authorizes the release of the dental records of the missing person. The form must state that if the person is still missing 30 days after the report was made, the form should be signed by a relative of the missing person and taken to the dentist of the missing person, who must release the dental records or copies thereof to the relative. The records must be submitted by the relative within the next 10 days to the law enforcement authority to which the missing person report was made.

(2) If the missing person has not been found within 30 days after the report was made and no relative exists or can be located, the law enforcement authority may execute a signed written declaration stating that an investigation into the location of the missing person is being conducted and that the dental records may be necessary to the investigation. A dentist shall release the missing person's dental records upon presentation of the declaration.

(3) If a person reported missing has not been found within 45 days after the report was made, the law enforcement authority conducting the investigation shall confer with the county coroner or state medical examiner and write a missing person report on a form supplied by the department of justice. The report and any dental records or copies thereof obtained under this section must be submitted to the department of justice.

(4) The department of justice shall maintain an information file concerning each person reported to it as missing. The file must include information received under this section and any other information the department considers relevant to locating the missing person.

(5) The department files must be made available to any law enforcement agency attempting to locate missing persons.

(6) A law enforcement authority that finds a missing person or is notified that he has been found shall notify the department of justice, which shall return all dental records to the dentist and destroy the file prepared under subsection (4) concerning the person.

History: En. Sec. 1, Ch. 389, L. 1983.

44-2-402. Dental examination — records — report. (1) If the coroner cannot identify a body, he or the state medical examiner shall have a dentist examine the body, and if the body cannot be identified from the dental examination, the coroner or state medical examiner must send the dental examination results to the department of justice on a form supplied by the department.

(2) The department is a repository for dental examination records filed with it under this section. The department shall compare such records with

dental records filed with it pursuant to 44-2-401 in an attempt to identify the body and must submit any findings to the coroner or state medical examiner.

History: En. Sec. 2, Ch. 389, L. 1983.

Part 5

Missing Children

44-2-501. Short title. This part may be cited as the "Missing Children Act of 1985".

History: En. Sec. 1, Ch. 559, L. 1985.

44-2-502. Definitions. As used in this part, the following definitions apply:

(1) "Missing child" means any person who has been reported as missing to a law enforcement authority and:

(a) who is under 18 years of age;

(b) whose temporary or permanent residence is in Montana or is believed to be in Montana; and

(c) whose location has not been determined.

(2) "Missing child report" is a report prepared on a form designed by the department of justice for use by private citizens and law enforcement authorities to report information about missing children to the missing children information program provided for in 44-2-503.

History: En. Sec. 2, Ch. 559, L. 1985.

44-2-503. Missing children information program. (1) The department of justice shall establish a missing children information program to create a central repository to aid in the location of missing children in Montana.

(2) The missing children information program shall:

(a) establish a system of intrastate communication of information relating to any child determined to be missing by the parent, guardian, or legal custodian of the child or by a law enforcement authority;

(b) provide a centralized file for the exchange of information on missing children within the state, including information obtained under the provisions of 44-2-401;

(c) interface with the national crime information center computer system for exchange of information on children suspected of interstate travel; and

(d) provide the superintendent of public instruction each month with a list of missing Montana school children for the purposes of 44-2-506.

History: En. Sec. 3, Ch. 559, L. 1985.

44-2-504. Reports to missing children information program. (1) All state, county, and municipal law enforcement authorities shall submit to the missing children information program provided for in 44-2-503 any missing child report and other information required by 44-2-401.

(2) Any parent, guardian, or legal custodian may submit a missing child report to the missing children information program on any child whose whereabouts are unknown, regardless of the circumstances, subsequent to making a report to the appropriate law enforcement authority within the county in which the child became missing.

(3) The parent, guardian, or legal custodian responsible for notifying the missing children information program or a law enforcement authority of a missing child shall immediately notify the authority and the program of any child whose location has been determined.

History: En. Sec. 4, Ch. 559, L. 1985.

44-2-505. Duties of law enforcement authority. Whenever a parent, guardian, or legal custodian of a child files a report with a law enforcement authority that the child is missing, the law enforcement authority shall:

(1) immediately inform all on-duty law enforcement officers of the existence of the missing child report;

(2) communicate the report to all other law enforcement authorities having jurisdiction in the county; and

(3) immediately enter the missing child report into the national crime information center computer system.

History: En. Sec. 5, Ch. 559, L. 1985.

44-2-506. List of missing Montana school children. (1) The superintendent of public instruction shall assist the missing children information program provided for in 44-2-503 in identifying and locating missing children who are enrolled in Montana public school districts in kindergarten through grade 12 by:

(a) collecting each month a list of missing Montana school children as provided by the missing children information program provided for in 44-2-503;

(b) distributing the list of missing school children on a monthly basis, unless the list has no change from the previous month's information, to all school districts admitting children to kindergarten through grade 12;

(c) designing the list to include pertinent available information for identification of the missing school child, including if possible a recent photograph of the child; and

(d) notifying the appropriate law enforcement agency and the missing children information program as soon as any additional information is obtained or contact is made with respect to a missing school child.

(2) Each school district in Montana shall:

(a) distribute to each school building within the district the list of missing school children provided for in subsection (1); and

(b) notify the appropriate law enforcement agency at the earliest known contact with any child whose name appears on the list of missing school children.

History: En. Sec. 6, Ch. 559, L. 1985.

44-2-507. Notice to parents of children absent from school. The trustees of any elementary or high school district shall establish procedures to be followed by school personnel for attempting to contact by the end of a school day any parent, guardian, or legal custodian whose child is absent from school but who has not reported the child as absent for the school day to determine whether the parent, guardian, or legal custodian is aware of the child's absence from school.

History: **En. Sec. 7, Ch. 559, L. 1985.**

Cross-References

School attendance, Title 20, ch. 5, part 1.

44-2-508 through 44-2-510 reserved.

44-2-511. School enrollment procedures to aid identification of missing children. (1) When a child enrolls in a school district for the first time, the school district shall:

(a) require that the child's parent, guardian, or legal custodian present to the school, within 40 days of enrollment, proof of identity of the child; and

(b) request the appropriate school records of the child from the previous school attended by the child. The school enrolling the child shall make the request within 40 days of enrollment of the child.

(2) If a child's parent, guardian, or legal custodian does not present the proof of identity required in subsection (1) within 40 days of enrollment or if the school district does not receive the school records of the child within 60 days of enrollment, the school shall notify the missing children information program provided in 44-2-503 and a local law enforcement authority of the fact that no proof of identity has been presented for the child.

(3) A school district that receives a request for the school records of a child shall transfer the records to the requesting school as soon as possible.

(4) When a school district receives a notice from a law enforcement authority, parent, guardian, or legal custodian that a child who is or has been enrolled in that school has been reported as a missing child, the school district shall:

(a) flag in some manner the student records of the child; and

(b) notify the missing children information program and a local law enforcement authority if a request for the school records is received from another school district.

(5) If it is necessary for a local law enforcement authority to conduct an investigation on a missing child, school personnel may not inform the person claiming custody of the child of the investigation while it is being conducted.

(6) For the purposes of this section:

(a) "proof of identity" means a certified copy of a birth certificate, a certified transcript or similar student records from the previous school, or any documentary evidence that a school district considers to be satisfactory proof of identity; and

(b) "school district" means a school district as defined in 20-6-101 or a nonpublic elementary school or high school in the state.

History: **En. Sec. 1, Ch. 407, L. 1987.**

Cross-References

Compulsory enrollment and excuses, 20-5-102.

Part 6

Escape or Release From Confinement — Notification

44-2-601. Notification of escape or release from confinement. (1) The notice required by subsection (2) must be given if any of the following persons escapes or is released from confinement:

(a) a person committed to a hospital or mental health facility under Title 46, chapter 14; or

(b) a person confined in a jail or other institution pending or during trial for a criminal offense involving the use or threat of physical force or violence or confined in a jail, prison, or other institution after conviction of a criminal offense involving the use or threat of physical force or violence or after being designated as a dangerous offender under 46-18-404.

(2) If a person referred to in subsection (1) escapes or is released from confinement, the institution in which he was confined shall notify:

(a) the sheriff or other law enforcement officials in the county in which the offense occurred;

(b) the sheriff or other law enforcement officials in the county or counties, if known, in which a victim or the victims of the offense reside at the time of the escape or release;

(c) the sheriff or other law enforcement officials in the county, if known, in which the person intends to reside upon leaving confinement;

(d) the sheriff or other law enforcement officials in the county in which the jail, prison, hospital, mental health facility, or other institution from which the person escaped or was released is located; and

(e) a court that has requested that it be notified in the event of a release or escape of the person.

History: En. Sec. 1, Ch. 103, L. 1991.

Part 7

Drug Abuse Resistance Education (D.A.R.E.)

Part Compiler's Comments

Effective Date: Section 11, Ch. 808, L. 1991, provided that this part is effective on passage and approval. Approved May 17, 1991.

44-2-701. Montana drug abuse resistance education trust fund account — administration by board of crime control. (1) There is a Montana drug abuse resistance education trust fund account in the state special revenue fund in the state treasury.

(2) Funds deposited in the account may be expended by the Montana board of crime control, as provided for in 2-15-2006, to fund services and activities under and payment of administrative costs of the Montana drug abuse resistance education program provided for in 44-2-702.

History: **En. Sec. 1, Ch. 808, L. 1991.**

44-2-702. Montana drug abuse resistance education program. (1) The Montana board of crime control shall use the money in the Montana drug abuse resistance education trust fund account established by 44-2-701 to fund services and activities operated by nonprofit, private, community-based educational and service organizations, units of local government, or school districts if those services and activities relate solely to the development, enhancement, and expansion of drug abuse resistance education in Montana.

(2) In administering the Montana drug abuse resistance education program, the Montana board of crime control shall:

(a) identify priorities for funding services, activities, and criteria for the receipt of program funds;

(b) monitor the expenditure of funds by organizations receiving funds under this section;

(c) evaluate the effectiveness of services and activities under this section; and

(d) adopt rules necessary to implement 44-2-703, 44-2-704, and this section.

History: **En. Sec. 2, Ch. 808, L. 1991.**

44-2-703. Gifts and grants to program. The Montana board of crime control may accept contributions, gifts, and grants, in money or otherwise, to the Montana drug abuse resistance education program. Upon receipt, contributions, monetary gifts, and grants must be paid into the Montana drug abuse resistance education trust fund account established by 44-2-701.

History: **En. Sec. 3, Ch. 808, L. 1991.**

44-2-704. Program costs. The costs incurred by the Montana board of crime control in administering the Montana drug abuse resistance education program must be paid with money from the Montana drug abuse resistance education trust fund account established by 44-2-701. The board shall keep costs to a minimum and shall use the board's existing office space, personnel, equipment, and supplies to the extent possible.

History: **En. Sec. 4, Ch. 808, L. 1991.**

44-2-705. Restriction on use of funds. Funds deposited in the Montana drug abuse resistance education trust fund account may be used only for the program authorized in 44-2-702 and may not be used to pay the expenses of any other program or service administered in whole or in part by the Montana board of crime control or the department of justice.

History: **En. Sec. 5, Ch. 808, L. 1991.**

CHAPTER 3

MONTANA FORENSIC SCIENCE SYSTEM ACT

Part 1 — General Provisions
Forensic Science

44-3-101. Short title.
44-3-102. Purpose.
44-3-103. Repealed.
44-3-104. Functions of department.
44-3-105. Authority to accept grants.
44-3-106. Power of attorney general to employ personnel.

Part 2 — Medical Examiners

44-3-201. State medical examiner.
44-3-202. Repealed.
44-3-203. Associate medical examiners — qualifications.
44-3-204. Associate medical examiners — compensation.
44-3-205 through 44-3-210 reserved.
44-3-211. Duties of state medical examiner.
44-3-212. Repealed.
44-3-213. Report to county attorney.
44-3-214. Records.

Part 3 — Laboratory of Criminalistics

44-3-301. Laboratory of criminalistics.
44-3-302. Fees for laboratory services.
44-3-303. Duties of laboratory director.
44-3-304. Repealed.

Part 4 — Provisions Relating to Corpses

44-3-401. Exemption from liability for autopsy.
44-3-402. Repealed.
44-3-403. Repealed.
44-3-404. Criminal penalty.

Chapter Cross-References

Office of County Coroner generally, Title 7, ch. 4, part 29.

Investigative procedures, Title 46, ch. 4.

Part 1

General Provisions
Forensic Science

44-3-101. Short title. This chapter shall be known as the "Montana Forensic Science System Act".

History: **En. 82-427 by Sec. 1, Ch. 530, L. 1977; R.C.M. 1947, 82-427.**

44-3-102. Purpose. The purpose of this chapter is to authorize the attorney general to provide the personnel, facilities, and procedures to:

(1) determine the cause of certain types of deaths by such investigation and examination as are in the public interest;

(2) analyze specimens for law enforcement officers; and

(3) provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

History: **En. 82-428 by Sec. 2, Ch. 530, L. 1977; R.C.M. 1947, 82-428; amd. Sec. 1, Ch. 689, L. 1989.**

44-3-103. Repealed. Sec. 14, Ch. 503, L. 1985.

History: **En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part).**

44-3-104. Functions of department. The forensics functions of the department of justice include operation of a division of forensic sciences.

History: **En. 82-430 by Sec. 4, Ch. 530, L. 1977; R.C.M. 1947, 82-430; amd. Sec. 6, Ch. 503, L. 1985; amd. Sec. 2, Ch. 689, L. 1989.**

44-3-105. Authority to accept grants. The department of justice is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this chapter.

History: **En. 82-431 by Sec. 5, Ch. 530, L. 1977; R.C.M. 1947, 82-431; amd. Sec. 7, Ch. 503, L. 1985.**

44-3-106. Power of attorney general to employ personnel. The attorney general is authorized to employ personnel necessary to perform the functions authorized under this chapter.

History: **En. 82-435 by Sec. 9, Ch. 530, L. 1977; R.C.M. 1947, 82-435(part); amd. Sec. 8, Ch. 503, L. 1985; amd. Sec. 3, Ch. 689, L. 1989.**

Part 2

Medical Examiners

Part Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Presumption person is dead, alive, or missing, 26-1-602, 26-1-622, 26-1-623.

Investigative criminal procedures, Title 46, ch. 4.

Cadavers and autopsies, Title 50, ch. 21.

Duty of medical examiner to report violations of Montana Elder Abuse Prevention Act, 52-3-811.

44-3-201. State medical examiner. A state medical examiner must be appointed by the attorney general. The state medical examiner must be a physician licensed to practice medicine in Montana.

History: **En. 82-429 by Sec. 3, Ch. 530, L. 1977; R.C.M. 1947, 82-429(part); amd. Sec. 9, Ch. 503, L. 1985; amd. Sec. 4, Ch. 689, L. 1989.**

44-3-202. Repealed. Sec. 8, Ch. 689, L. 1989.

History: **En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).**

44-3-203. Associate medical examiners — qualifications. Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(1).

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

44-3-204. Associate medical examiners — compensation. (1) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(2) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

History: En. 82-437 by Sec. 11, Ch. 530, L. 1977; R.C.M. 1947, 82-437(2), (3).

44-3-205 through 44-3-210 reserved.

44-3-211. Duties of state medical examiner. The duties of the state medical examiner include but are not limited to the following:

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this chapter;

(3) stimulating and directing research in the field of forensic pathology;

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers;

(5) appointing associate medical examiners; and

(6) performing autopsies as requested.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(1) thru (4); amd. Sec. 5, Ch. 689, L. 1989.

Cross-References

Duties of County Coroner, 7-4-2911.

Expert testimony, Rules 702 through 705, M.R.Ev. (see Title 26, ch. 10).

Coroner's report of traffic accident deaths, 61-7-112.

44-3-212. Repealed. Sec. 8, Ch. 689, L. 1989.

History: En. 82-436 by Sec. 10, Ch. 530, L. 1977; R.C.M. 1947, 82-436(5) thru (7).

44-3-213. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, the state medical examiner shall make available in writing to the county attorney his determination as to the cause of death.

History: En. 82-446 by Sec. 20, Ch. 530, L. 1977; R.C.M. 1947, 82-446; amd. Sec. 22, Ch. 7, L. 1979.

Cross-References

Coroner's report to County Attorney, 46-4-103.

44-3-214. Records. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

History: En. 82-447 by Sec. 21, Ch. 530, L. 1977; R.C.M. 1947, 82-447.

Part 3

Laboratory of Criminalistics

Part Cross-References

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

44-3-301. Laboratory of criminalistics. (1) There is a laboratory of criminalistics within the department of justice. The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers and all state agencies and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(1), (2); amd. Sec. 6, Ch. 689, L. 1989.

44-3-302. Fees for laboratory services. The laboratory may charge reasonable fees for its services, except that it may not charge state, county, city, or municipal law enforcement officers or coroners of this state for services rendered. Fees collected under this section shall be deposited in an account in the state special revenue fund in the state treasury and used to pay operation expenses of the laboratory.

History: En. 82-438 by Sec. 12, Ch. 530, L. 1977; R.C.M. 1947, 82-438(3); amd. Sec. 1, Ch. 277, L. 1983.

44-3-303. Duties of laboratory director. There is a director of the laboratory of criminalistics. The laboratory director shall:

(1) be responsible for supervision and direction of the laboratory;
(2) assist the department in the appointment of laboratory personnel;
(3) render decisions as to the disposition of specimens; and
(4) perform all other duties required by the rules of the department.

History: En. 82-439 by Sec. 13, Ch. 530, L. 1977; R.C.M. 1947, 82-439; amd. Sec. 10, Ch. 503, L. 1985; amd. Sec. 7, Ch. 689, L. 1989.

44-3-304. Repealed. Sec. 8, Ch. 689, L. 1989.

History: En. 82-440 by Sec. 14, Ch. 530, L. 1977; R.C.M. 1947, 82-440(part).

Part 4

Provisions Relating to Corpses

Part Cross-References

Investigation of death — autopsy, Title 46, ch. 4, part 1.

Cadavers and autopsies, Title 50, ch. 21.

Determination of death, Title 50, ch. 22.

44-3-401. Exemption from liability for autopsy. No criminal or civil action may arise against a medical examiner for performing an autopsy under this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.

History: En. 82-441 by Sec. 15, Ch. 530, L. 1977; R.C.M. 1947, 82-441; amd. Sec. 1, Ch. 492, L. 1985.

Cross-References

Liability of mortuary or physician, 46-4-104.

44-3-402. Repealed. Sec. 2, Ch. 408, L. 1983. (See 7-4-2917.)

History: En. 82-442 by Sec. 16, Ch. 530, L. 1977; R.C.M. 1947, 82-442.

44-3-403. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. 82-443 by Sec. 17, Ch. 530, L. 1977; R.C.M. 1947, 82-443.

44-3-404. Criminal penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than 1 year, or both, if he:

(1) purposely fails to report or conceals a death, including a fetal death;

(2) refuses to make available prior medical or other information in a death investigation;

(3) without an order from the coroner or state medical examiner, purposely touches, removes, or disturbs a corpse, its clothing, or anything near the corpse; or

(4) knowingly or purposely disobeys a cessation order of a coroner.

History: En. 82-445 by Sec. 19, Ch. 530, L. 1977; R.C.M. 1947, 82-445; amd. Sec. 23, Ch. 7, L. 1979; amd. Sec. 12, Ch. 660, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at end, inserted "including a fetal death"; in (3), at end after "corpse", deleted "under investigation with the intent to alter the evidence or circumstances surrounding the death"; inserted (4) relating to disobeying a cessation order; and made minor changes in style.

CHAPTER 4

MISCELLANEOUS FUNCTIONS OF DEPARTMENT OF JUSTICE

Part 1 — Training Coordinator for County Attorneys

44-4-101. Position established.
44-4-102. Appointment.
44-4-103. Functions.
44-4-104 through 44-4-110 reserved.
44-4-111. Request for special counsel services.
44-4-112. County payment for special counsel services.

Part 2 — Confidential License Plates and Registrations

44-4-201. Authorization to issue confidential plates and registrations.
44-4-202. Authority of attorney general to adopt rules.
44-4-203. Registration records.
44-4-204. Applications for confidential plates and registrations.
44-4-205. Use of confidential plates and registrations.
44-4-206. Revocation.

Part 3 — Board of Crime Control

44-4-301. Functions.
44-4-302. Definitions.

Parts 4 through 8 reserved

Part 9 — Railroad Corporation Special Peace Officers

44-4-901. Attorney general — appointment of special peace officers.
44-4-902. Application for appointment.
44-4-903. Limitations on special peace officer.
44-4-904. Responsibility of corporation.

Chapter Cross-References

Duty of Attorney General with regard to crime victims, 46-24-103.

Part 1

Training Coordinator for County Attorneys

44-4-101. Position established. There is created within the department of justice the position of training coordinator for county attorneys.

History: En. Sec. 1, Ch. 353, L. 1973; R.C.M. 1947, 82-421; amd. Sec. 24, Ch. 7, L. 1979.

44-4-102. Appointment. The training coordinator shall be appointed by the attorney general from a list of three names proposed and submitted by the Montana county attorneys' association.

History: En. Sec. 2, Ch. 353, L. 1973; R.C.M. 1947, 82-422.

44-4-103. Functions. The training coordinator shall perform the functions assigned by the attorney general. The functions may include but are not limited to the following:

(1) providing local training in current aspects of the criminal law for county attorneys, city attorneys, and other law enforcement personnel. The training coordinator may require payment by city attorneys of a fee commensurate with the cost of the training.

(2) assisting in developing and disseminating standards, procedures, and policies which will insure that criminal laws are applied consistently and uniformly throughout Montana;

(3) consolidating present and past information on important aspects of the criminal law and providing a pool of official opinions, legal briefs, and other relevant criminal law information;

(4) providing assistance with research, briefs, or other technical services requested by a county attorney or law enforcement official;

(5) applying for and disbursing federal funds available to aid the prosecutorial function; and

(6) as provided in 44-4-111, acting as special counsel.

History: En. Sec. 3, Ch. 353, L. 1973; R.C.M. 1947, 82-423; amd. Sec. 25, Ch. 7, L. 1979; amd. Sec. 1, Ch. 7, L. 1983; amd. Sec. 1, Ch. 291, L. 1983.

44-4-104 through 44-4-110 reserved.

44-4-111. Request for special counsel services. (1) Except as provided in subsection (2), the training coordinator may act as special counsel upon request of the county attorney with the approval of the governing body of a county.

(2) If a case involves the prosecution of a member of the governing body of a county or a person related to him by consanguinity within the fourth degree or affinity within the second degree, the coordinator may, with the consent of the attorney general, act as special counsel upon request of the county attorney without approval of the governing body of the county.

History: En. Sec. 2, Ch. 7, L. 1983.

Cross-References

Affinity defined, 1-1-219.

Computing degrees of kindred, Title 72, ch. 11, part 1.

44-4-112. County payment for special counsel services. Whenever the training coordinator acts as special counsel as provided in 44-4-111, the department of justice shall charge the county a reasonable hourly fee for the training coordinator's services. Upon receipt of payment for these services, the department shall deposit these funds into the state general fund.

History: En. Sec. 3, Ch. 7, L. 1983.

Part 2

Confidential License Plates and Registrations

Part Cross-References

Registration of motor vehicles, Title 61, ch. 3.

Records of Department of Justice open to public inspection, 61-3-101.

44-4-201. Authorization to issue confidential plates and registrations. (1) The attorney general may issue confidential license plates and certificates of registration to bona fide law enforcement agencies, except the highway patrol, within the state of Montana.

(2) The attorney general may issue confidential license plates and certificates of registration for purposes other than law enforcement.

(3) Confidential license plates and certificates of registration are exempt from all requirements for public disclosure.

(4) The issuance of confidential registrations is subject to the provisions of this part.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(part); amd. Sec. 1, Ch. 653, L. 1989.

44-4-202. Authority of attorney general to adopt rules. The attorney general may adopt rules necessary to implement the provisions of this part and to prevent the abuse or misuse of confidential registration plates.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(7).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, parts 1 through 3.

44-4-203. Registration records. (1) The registration records of each vehicle so registered shall be maintained by the department of justice.

(2) The contents of such confidential registration records may be disclosed only at the discretion of the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(4), (5).

44-4-204. Applications for confidential plates and registrations. Applications by law enforcement agencies operating within the state must be made to the attorney general on a form and in a manner prescribed by the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(1).

44-4-205. Use of confidential plates and registrations. (1) Such license plates and registrations may be displayed and used only during and in the furtherance of official law enforcement investigations or for purposes as authorized in 44-4-201(2).

(2) Such confidential plates and certificates of registration may be used outside the state by federal agencies and state agencies upon application to the attorney general.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(2), (3); amd. Sec. 2, Ch. 653, L. 1989.

44-4-206. Revocation. Such registrations may be revoked at any time by the attorney general at his discretion. On delivery of notice of revocation, the registrant shall, within 24 hours, deliver such license plates and certificate of registration to the attorney general or his duly appointed agent.

History: En. 82-424 by Sec. 1, Ch. 90, L. 1975; R.C.M. 1947, 82-424(6).

Part 3

Board of Crime Control

Part Cross-References

Creation and composition, 2-15-2006.

Training program required for reserve officers, 7-32-214.

Employment standards of Board, 7-32-303.

Qualifications of policemen, 7-32-4112.

44-4-301. Functions. (1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature.

(2) The board shall have the authority to establish minimum qualifying standards for employment of peace officers, as defined in 7-32-303, detention officers, detention center administrators, and public safety communications officers.

(3) The board shall have the authority to require basic training for officers, establish minimum standards for equipment and procedures and for advanced in-service training for officers, establish minimum standards for the certification of public safety communications officers, and establish minimum standards for law enforcement and detention officer training schools administered by the state or any of its political subdivisions or agencies, to insure the public health, welfare, and safety.

(4) The board may waive the minimum qualification standard provided in subsection (2) for good cause shown.

(5) The board shall establish minimum standards for training of probation and parole officers, pursuant to 46-23-1003.

History: En. 82A-1207 by Sec. 1, Ch. 272, L. 1971; amd. Sec. 1, Ch. 61, L. 1973; amd. Sec. 1, Ch. 202, L. 1977; R.C.M. 1947, 82A-1207(4); amd. Sec. 1, Ch. 345, L. 1989; amd. Sec. 4, Ch. 58, L. 1991; amd. Sec. 1, Ch. 809, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 58 at end of (2) inserted reference to public safety communications officers; near middle of (3) inserted reference to standards for certification of public safety communications officers; and made minor change in style. Amendment effective July 1, 1991.

Chapter 809 in (4) inserted "provided in subsection (2)"; and inserted (5) requiring Board to establish minimum standards for training probation and parole officers.

Cross-References

Law Enforcement Academy, Title 44, ch. 10.

44-4-302. Definitions. As used in 44-4-301 and this section, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to a detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center or temporary detention center.

(3) "Detention officer" means a person or a peace officer who has full-time or part-time authority and responsibility for maintaining custody of inmates and who performs tasks related to the operation of a detention center or temporary detention center.

(4) "Public safety communications officer" means a person who receives requests for emergency services, as defined in 10-4-101, dispatches the appropriate emergency service units, and is certified under 7-31-203.

(5) "Temporary detention center" means a facility for the temporary detention of an arrested person for up to 72 hours, excluding holidays, Saturdays, and Sundays. The period of time a person is held in temporary detention may not exceed 96 hours.

History: En. Sec. 2, Ch. 345, L. 1989; amd. Sec. 5, Ch. 58, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definition of public safety communications officer. Amendment effective July 1, 1991.

Parts 4 through 8 reserved

Part 9

Railroad Corporation Special Peace Officers

Part Cross-References

Attorney General — general duties, 2-15-501.

Railroad corporations, Title 69, ch. 14, part 5.

Railroad personnel, Title 69, ch. 14, part 10.

44-4-901. Attorney general — appointment of special peace officers. The attorney general may appoint special peace officers as provided in this part.

History: En. Sec. 1, Ch. 552, L. 1987.

44-4-902. Application for appointment. A class I railroad corporation, as defined by the interstate commerce commission in part 1201 of 49 CFR, desiring the appointment of an officer or employee as a special peace officer shall apply to the attorney general. The application must state the name, age, and place of residence of the person applying for appointment. The applicant must have at least 3 years of experience as a class I railroad peace officer or have completed a training course at an approved law enforcement academy, or meet the qualifications described in 7-32-303 and adopted under 44-4-301. The application must be signed by the applicant and a managing officer of the railroad corporation. The managing officer signing the application shall at the same time submit an affidavit to the effect that he is acquainted with the person seeking appointment, that he believes him to be of good moral character, and that he is of such character and experience that he can be safely entrusted with the powers and duties of a special peace officer.

History: En. Sec. 2, Ch. 552, L. 1987.

44-4-903. Limitations on special peace officer. A person appointed and sworn as a special peace officer shall when on duty have the power and authority of a peace officer but may exercise such power and authority only in the protection of the property of the class I railroad corporation employing him.

History: En. Sec. 3, Ch. 552, L. 1987.

44-4-904. Responsibility of corporation. The class I railroad corporation employing a special peace officer is solely responsible for the compensation of the special peace officer and is civilly liable for any action of the officer arising out of his actions as a special peace officer. The class I railroad corporation employing a special peace officer shall hold the state, its subdivisions, and the officers and employees thereof harmless and indemnify them from any claim or liability, including costs and attorney fees, arising out of any action of a special peace officer or the certification of the special peace officer by the state.

History: En. Sec. 4, Ch. 552, L. 1987.

CHAPTER 5

CRIMINAL JUSTICE INFORMATION

Part 1 — General Provisions

44-5-101. Short title.
44-5-102. Purpose.
44-5-103. Definitions.
44-5-104. Relationship to other statutes.
44-5-105. Department of justice — powers.
44-5-106 through 44-5-110 reserved.
44-5-111. Court order to enforce compliance.
44-5-112. Sanctions.

Part 2 — Collection and Processing

44-5-201. Scope of authority to collect, process, and preserve criminal justice information.

44-5-202. Photographs and fingerprints.
44-5-203 through 44-5-210 reserved.
44-5-211. Records — form, contents, limits on use.
44-5-212. Record preservation.
44-5-213. Procedures to ensure accuracy of criminal history records.
44-5-214. Inspection or transfer of criminal history records.
44-5-215. Challenge and correction.

Part 3 — Dissemination

44-5-301. Dissemination of public criminal justice information.
44-5-302. Dissemination of criminal history record information that is not public criminal justice information.
44-5-303. Dissemination of confidential criminal justice information.
44-5-304. Development of statistical information — agreements as to access.
44-5-305. Dissemination of copied or inspected records.

Part 4 — System Security

44-5-401. Criminal justice information system security.
44-5-402. Automated equipment.
44-5-403. Computer programming.
44-5-404. Manual equipment.
44-5-405. Personnel.

Part 5 — Criminal Intelligence Information Section

44-5-501. Creation of criminal intelligence information section — advisory council.
44-5-502. Definitions.
44-5-503. Duties of section.
44-5-504. Section standards and procedures.
44-5-505. Section supervisor and personnel.
44-5-506. Participating agencies.
44-5-507 through 44-5-510 reserved.
44-5-511. Functions of advisory council.
44-5-512 through 44-5-514 reserved.
44-5-515. Protection of individual privacy.

Part 1

General Provisions

44-5-101. Short title. This chapter may be cited as the "Montana Criminal Justice Information Act of 1979".

History: En. Sec. 1, Ch. 525, L. 1979.

44-5-102. Purpose. The purpose of this chapter is to require the photographing and fingerprinting of persons under certain circumstances, to ensure the accuracy and completeness of criminal history information, and to establish effective protection of individual privacy in confidential and nonconfidential criminal justice information collection, storage, and dissemination.

History: En. Sec. 2, Ch. 525, L. 1979; amd. Sec. 9, Ch. 145, L. 1985.

44-5-103. Definitions. As used in this chapter, the following definitions apply:

(1) "Access" means the ability to read, change, copy, use, transfer, or disseminate criminal justice information maintained by criminal justice agencies.

(2) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It includes criminal identification activities and the collection, storage, and dissemination of criminal justice information.

(3) "Confidential criminal justice information" means:

(a) criminal investigative information;

(b) criminal intelligence information;

(c) fingerprints and photographs;

(d) criminal justice information or records made confidential by law; and

(e) any other criminal justice information not clearly defined as public criminal justice information.

(4) (a) "Criminal history record information" means information about individuals collected by criminal justice agencies consisting of identifiable descriptions and notations of arrests; detentions; the filing of complaints, indictments, or informations and dispositions arising therefrom; sentences; correctional status; and release. It includes identification information, such as fingerprint records or photographs, unless such information is obtained for purposes other than the administration of criminal justice.

(b) Criminal history record information does not include:

(i) records of traffic offenses maintained by the department of justice; or

(ii) court records.

(5) (a) "Criminal intelligence information" means information associated with an identifiable individual, group, organization, or event compiled by a criminal justice agency:

(i) in the course of conducting an investigation relating to a major criminal conspiracy, projecting potential criminal operation, or producing an estimate of future major criminal activities; or

(ii) in relation to the reliability of information including information derived from reports of informants or investigators or from any type of surveillance.

(b) Criminal intelligence information does not include information relating to political surveillance or criminal investigative information.

(6) "Criminal investigative information" means information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting an investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance. It does not include criminal intelligence information.

(7) "Criminal justice agency" means:

(a) any court with criminal jurisdiction;

(b) any federal, state, or local government agency designated by statute or by a governor's executive order to perform as its principal function the administration of criminal justice; or

(c) any local government agency not included under subsection (7)(b) that performs as its principal function the administration of criminal justice pursuant to an ordinance or local executive order.

(8) "Criminal justice information" means information relating to criminal justice collected, processed, or preserved by a criminal justice agency. It does not include the administrative records of a criminal justice agency.

(9) "Criminal justice information system" means a system, automated or manual, operated by federal, regional, state, or local governments or governmental organizations for collecting, processing, preserving, or disseminating criminal justice information. It includes equipment, facilities, procedures, and agreements.

(10) (a) "Disposition" means information disclosing that criminal proceedings against an individual have terminated and describing the nature of the termination or information relating to sentencing, correctional supervision, release from correctional supervision, the outcome of appellate or collateral review of criminal proceedings, or executive clemency. Criminal proceedings have terminated if a decision has been made not to bring charges or criminal proceedings have been concluded, abandoned, or indefinitely postponed.

(b) Particular dispositions include but are not limited to:

(i) conviction at trial or on a plea of guilty;

(ii) acquittal;

(iii) acquittal by reason of mental disease or defect;

(iv) acquittal by reason of mental incompetence;

(v) the sentence imposed, including all conditions attached thereto by the sentencing judge;

(vi) deferred imposition of sentence with any conditions of deferral;

(vii) nolle prosequi;

(viii) nolo contendere plea;

(ix) deferred prosecution or diversion;

(x) bond forfeiture;

(xi) death;

(xii) release as a result of a successful collateral attack;

(xiii) dismissal of criminal proceedings by the court with or without the commencement of a civil action for determination of mental incompetence or mental illness;

(xiv) a finding of civil incompetence or mental illness;

(xv) exercise of executive clemency;

(xvi) correctional placement on probation or parole or release; or

(xvii) revocation of probation or parole.

(c) A single arrest of an individual may result in more than one disposition.

(11) "Dissemination" means the communication or transfer of criminal justice information to individuals or agencies other than the criminal justice

agency that maintains such information. It includes confirmation of the existence or nonexistence of criminal justice information.

(12) "Public criminal justice information" means information:

(a) made public by law;

(b) of court records and proceedings;

(c) of convictions, deferred sentences, and deferred prosecutions;

(d) of postconviction proceedings and status;

(e) originated by a criminal justice agency, including:

(i) initial offense reports;

(ii) initial arrest records;

(iii) bail records; and

(iv) daily jail occupancy rosters;

(f) considered necessary by a criminal justice agency to secure public assistance in the apprehension of a suspect; or

(g) statistical information.

(13) "State repository" means the recordkeeping systems maintained by the department of justice pursuant to 44-2-201 in which criminal history record information is collected, processed, preserved, and disseminated.

(14) "Statistical information" means data derived from records in which individuals are not identified or identification is deleted and from which neither individual identity nor any other unique characteristic that could identify an individual is ascertainable.

History: En. Sec. 3, Ch. 525, L. 1979; amd. Sec. 1, Ch. 804, L. 1991.

Compiler's Comments

1991 Amendment: In definition of criminal justice agency, in (b) before "state", inserted "federal"; in definition of public criminal justice information, after "information", deleted "except confidential criminal justice information"; and made minor changes in style.

44-5-104. Relationship to other statutes. Laws requiring disclosure of public records, writings, or information are not superseded by this chapter unless clearly inconsistent with its specific language. Laws requiring confidentiality of information contained in records or writings are not superseded by this chapter, which applies only when information may be disclosed consistent with such laws.

History: En. Sec. 4, Ch. 525, L. 1979.

Cross-References

Right to know and right of privacy, Art. II, sec. 9 and 10, Mont. Const.

Public records, Title 2, ch. 6.

44-5-105. Department of justice — powers. The department of justice may:

(1) adopt rules necessary to carry out the purposes of this chapter;

(2) hear and decide contested cases or challenges that may arise under the provisions of the Montana Administrative Procedure Act;

(3) conduct audits of the criminal history record information systems of a representative sample of state and local criminal justice agencies chosen annually on a random basis to determine whether they are in compliance with the provisions of this chapter. The function authorized in this subsection may

not be assigned to any subagency that has supervisory authority over any criminal justice information system.

History: En. Sec. 23, Ch. 525, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

44-5-106 through 44-5-110 reserved.

44-5-111. Court order to enforce compliance. Any person may apply for an order from a district court to enforce compliance with any provision of this chapter.

History: En. Sec. 24, Ch. 525, L. 1979.

44-5-112. Sanctions. The sanctions provided in 44-2-205 apply to any knowing or purposeful violation of this chapter.

History: En. Sec. 22, Ch. 525, L. 1979.

Cross-References

Knowingly and purposely defined, 1-1-204, 45-2-101.

Part 2

Collection and Processing

Part Cross-References

Public records generally, Title 2, ch. 6, part 1.

44-5-201. Scope of authority to collect, process, and preserve criminal justice information. A criminal justice agency may collect, process, and preserve only that criminal justice information which is necessary for the performance of its authorized functions.

History: En. Sec. 5, Ch. 525, L. 1979.

44-5-202. Photographs and fingerprints. (1) The following agencies may, if authorized by subsections (2) through (5), collect, process, and preserve photographs and fingerprints:

(a) any criminal justice agency performing, under law, the functions of a police department or a sheriff's office, or both;

(b) the department of corrections and human services; and

(c) the department of justice.

(2) The department of corrections and human services may photograph and fingerprint anyone under the jurisdiction of the division of corrections or its successor.

(3) A criminal justice agency described in subsection (1)(a) shall photograph and fingerprint a person who has been arrested or noticed or summoned to appear to answer an information or indictment if:

(a) the charge is the commission of a felony;

(b) the identification of an accused is in issue; or

(c) it is required to do so by court order.

(4) Whenever a person charged with the commission of a felony is not arrested, he shall submit himself to the sheriff, chief of police, or other concerned law enforcement officer for fingerprinting at the time of his initial appearance in court to answer the information or indictment against him.

(5) A criminal justice agency described in subsection (1)(a) may photograph and fingerprint an accused if he has been arrested for the commission of a misdemeanor, except that an individual arrested for a traffic, regulatory, or fish and game offense may not be photographed or fingerprinted unless he is incarcerated.

(6) Within 10 days the originating agency shall send the state repository a copy of each fingerprint taken on a completed form provided by the state repository.

(7) The state repository shall compare the fingerprints received with those already on file in the state repository. If it is determined that the individual is wanted or is a fugitive from justice, the state repository shall at once inform the originating agency. If it is determined that the individual has a criminal record, the state repository shall send the originating agency a copy of the individual's complete criminal history record.

(8) Photographs and fingerprints taken shall be returned by the state repository to the originating agency, which shall return all copies to the individual from whom they were taken, in the following circumstances:

(a) upon order of the court that had jurisdiction; or

(b) upon the request of the individual when he was released without the filing of charges or when the charges did not result in a conviction.

History: En. Sec. 6, Ch. 525, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 804, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 804 at end of (8) inserted "in the following circumstances"; in (8)(a) substituted "upon order of the court that had jurisdiction" for "if a court so orders"; and in (8)(b) substituted "when he was released without the filing of charges or when the charges did not result in a conviction" for former (8)(b)(i) through (8)(b)(iii) that provided for return of copies of photographs and fingerprints upon request to individual if no charges were filed, if a misdemeanor charge did not result in a conviction, or if the individual was found innocent of the offense charged.

Cross-References

Requiring fingerprints for alcoholic beverage license, 16-4-403.

Fingerprints and photographs of youths, 41-5-304.

Right not to be fingerprinted, 53-20-143, 53-21-143.

Rights concerning photographs, 53-20-144, 53-21-144.

44-5-203 through 44-5-210 reserved.

44-5-211. Records — form, contents, limits on use. A criminal justice agency originating initial offense reports, initial arrest records, bail records, or daily jail occupancy rosters may maintain a chronological or numerical record of these items. These records may not contain any prior criminal history record information and may not be used to gain access to any other public criminal justice information.

History: **En. Sec. 7, Ch. 525, L. 1979.**

44-5-212. Record preservation. Unless required by federal law, expunging, purging, or destroying of criminal justice information is not required based on the length of time such records are held.

History: **En. Sec. 8, Ch. 525, L. 1979.**

44-5-213. Procedures to ensure accuracy of criminal history records. In order to ensure complete and accurate criminal history record information:

(1) the department of justice shall maintain a centralized state repository of criminal history record information to serve all criminal justice agencies in the state;

(2) dispositions resulting from formal proceedings in a court having jurisdiction in a criminal action against an individual who has been photographed and fingerprinted under 44-5-202 shall be reported to the originating agency and the state repository within 15 days. If the dispositions can readily be collected and reported through the court system, the dispositions may be submitted to the state repository by the administrative office of the courts.

(3) an originating agency shall advise the state repository within 30 days of all dispositions concerning the termination of criminal proceedings against an individual who has been photographed and fingerprinted under 44-5-202;

(4) the department of corrections and human services shall advise the state repository within 30 days of all dispositions subsequent to conviction of an individual who has been photographed and fingerprinted under 44-5-202;

(5) each criminal justice agency shall query the state repository prior to dissemination of any criminal history record information to ensure the timeliness of the information. When no final disposition is shown by the state repository records, the state repository shall query the source of the document or other appropriate source for current status. Inquiries shall be made prior to any dissemination except in those cases in which time is of the essence and the repository is technically incapable of responding within the necessary time period. If time is of the essence, the inquiry shall still be made and the response shall be forwarded as soon as it is received.

(6) each criminal justice agency shall ensure that all its criminal justice information is complete, accurate, and current; and

(7) the department of justice shall adopt rules for criminal justice agencies other than those that are part of the judicial branch of government to implement this section. The department of justice may adopt rules for the same purpose for the judicial branch of government if the supreme court consents to the rules.

History: **En. Sec. 9, Ch. 525, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.**

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

44-5-214. Inspection or transfer of criminal history records. (1) An individual or his agent may inspect any criminal history record information maintained about the individual or transfer copies of that information to any other person upon the presentation of satisfactory identification to the criminal justice agency maintaining the criminal history record information. Fingerprints may be required for identification. An agent must also submit a notarized authorization from his principal or an authorization order from a district court.

(2) If an individual's criminal history record information is maintained in the state repository, copies of the records shall be transferred to the local agency for inspection upon proper request of the individual or his agent. A local agency shall honor a verified affidavit accompanying a request by an individual for a transfer of copies of criminal history record information concerning that individual to a criminal justice agency of another state for the purpose of complying with this chapter.

(3) (a) An individual may request inspection or transfer of copies, or both, of criminal history record information only during normal working hours.

(b) Copies of records may be made by or at the request of a properly identified individual or his authorized agent. If a machine for making copies is not reasonably available, the individual or his agent may make handwritten copies. A charge, not to exceed the cost of labor and materials, may be made by the agency for machine-produced copies. Each copy must be clearly marked to indicate that it is for inspection only.

(c) An agency employee should be available to answer questions concerning record content. A record of each request to inspect records under this section must be maintained.

History: En. Sec. 19, Ch. 525, L. 1979.

Cross-References

Dissemination of public criminal justice information, 44-5-301.

Dissemination of criminal history records, 44-5-302.

Dissemination of confidential criminal justice information, 44-5-303.

Dissemination of copied or inspected records, 44-5-305.

44-5-215. Challenge and correction. (1) After inspection of criminal history record information, an individual may contest the accuracy or completeness, or both, of the information about himself.

(2) If the agency maintaining the criminal history record information does not correct it to the individual's satisfaction, the individual may request review and correction by the executive head of the agency.

(3) If the requested correction is denied by the head of the agency, the individual may present a challenge to the department of justice.

(4) If the agency in charge of the record in question can verify the accuracy of its record by communication with the originating criminal justice agency, it shall do so. If accuracy or completeness cannot be verified and the agency primarily originating the information containing the alleged error or omission is in the state, the individual shall address his challenge to that agency. If information necessary to verify the accuracy or completeness of the record cannot be obtained by the originating agency, it may rely on verified written

documents or include the individual's allegation in its records in dissemination until there is a final disposition of the challenge.

(5) If the challenge is successful, the agency shall:

(a) supply to the individual, if requested, a list of those noncriminal justice agencies which have received copies of the criminal history record information about the individual; and

(b) immediately correct its records and notify all criminal justice agencies to which it has given erroneous or incomplete information of these changes.

History: En. Sec. 20, Ch. 525, L. 1979.

Cross-References

Torts by governmental entities generally, Title 2, ch. 9, parts 1 and 3.

Record preservation, 44-5-212.

Part 3

Dissemination

44-5-301. Dissemination of public criminal justice information. (1) There are no restrictions on the dissemination of public criminal justice information except for the following:

(a) Whenever a record or index is compiled by name or universal identifier from a manual or automated system, only information about convictions, deferred prosecutions, or deferred sentences is available to the public.

(b) Whenever the conviction record reflects only misdemeanors or deferred prosecutions and whenever there are no convictions except for traffic, regulatory, or fish and game offenses for a period of 5 years from the date of the last conviction, no record or index may be disseminated pursuant to subsection (1)(a). However, the original documents are available to the public from the originating criminal justice agency.

(2) All public criminal justice information is available from the agency that is the source of the original documents and that is authorized to maintain the documents according to applicable law. These documents shall be open, subject to the restrictions in this section, during the normal business hours of the agency. A reasonable charge may be made by a criminal justice agency for providing a copy of public criminal justice information.

History: En. Sec. 10, Ch. 525, L. 1979.

44-5-302. Dissemination of criminal history record information that is not public criminal justice information. (1) Criminal history record information may not be disseminated to agencies other than criminal justice agencies unless:

(a) the information is disseminated with the consent or at the request of the individual about whom it relates according to procedures specified in 44-5-214 and 44-5-215;

(b) a district court considers dissemination necessary;

(c) the information is disseminated in compliance with 44-5-304; or

(d) the agency receiving the information is authorized by law to receive it.

(2) The department of justice and other criminal justice agencies may accept fingerprints of applicants for admission to the state bar of Montana and shall, with respect to a bar admission applicant whose fingerprints are given to the department or agency by the state bar, exchange available state, multistate, local, federal (to the extent allowed by federal law), and other criminal history record information with the state bar for licensing purposes.

History: En. Sec. 11, Ch. 525, L. 1979; amd. Sec. 1, Ch. 15, L. 1989.

44-5-303. Dissemination of confidential criminal justice information. Dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure. A criminal justice agency that accepts confidential criminal justice information assumes equal responsibility for the security of such information with the originating agency. Whenever confidential criminal justice information is disseminated, it must be designated as confidential.

History: En. Sec. 12, Ch. 525, L. 1979; amd. Sec. 3, Ch. 804, L. 1991.

Compiler's Comments

1991 Amendment: At end of first sentence inserted "and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure".

Cross-References

Inspection or transfer of criminal history records, 44-5-214.

44-5-304. Development of statistical information — agreements as to access. (1) An individual or agency with the express purpose of developing statistical information may have access to criminal history record information pursuant to an agreement with a criminal justice agency. The agreement shall contain, but need not be limited to, the following provisions:

(a) specific authorization for access to specific information;

(b) a limitation on the use of the information to research, evaluative, or statistical purposes;

(c) assurance of the confidentiality and security of the information; and

(d) sanctions for violations of the agreement or this section.

(2) Proposed agreements and any completed research, statistical, or evaluative study or product developed from the use of statistical information is subject to review and approval by the department of justice to ensure compliance with this chapter.

History: En. Sec. 13, Ch. 525, L. 1979.

44-5-305. Dissemination of copied or inspected records. (1) Criminal justice agencies shall maintain a record of all agencies and individuals to which or whom copies of criminal history record information have been disseminated.

(2) A criminal justice agency supplying criminal history record information to an individual upon request is not responsible for the use or secondary

dissemination of copied or inspected information and is not required to furnish updated information except upon a subsequent request by the individual.

History: En. Sec. 21, Ch. 525, L. 1979.

Part 4

System Security

Part Cross-References

Right to know and right of privacy, Art. II, sec. 9 and 10, Mont. Const.

Public records, Title 2, ch. 6.

44-5-401. Criminal justice information system security. Provisions for the recording, preservation, dissemination, and management of court records are made by statute and may be supplemented by supreme court rule. Any other criminal justice agency shall protect the security of any criminal justice information system, automated or manual, under its control by taking reasonable precautions and establishing procedures to protect the system and data stored in the system from damage and for the prevention of and recovery from hazards such as fire, flood, power failure, and entry into secure areas by unauthorized persons.

History: En. Sec. 14, Ch. 525, L. 1979.

44-5-402. Automated equipment. In an automated criminal justice information system, information shall be collected, processed, and preserved on a computer dedicated solely to criminal justice information, except that, if this is impractical, a central computer may be used if adequate safeguards are built into the criminal justice information system to prevent unauthorized inquiry, modification, or destruction of criminal justice information in conformity with the current federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: En. Sec. 15, Ch. 525, L. 1979.

44-5-403. Computer programming. Procedures for each automated criminal justice information system shall assure that the information is secured by the following programming techniques and security procedures:

(1) the assignment of a terminal identification code to each terminal authorized to access the criminal justice information system;

(2) the assignment of a unique identification number to each authorized terminal operator, which number must be used to gain access to the files;

(3) the maintenance of a record of each inquiry to identify the inquiring agency, the program used to make the inquiry, the date of the inquiry, and the name of the file being queried;

(4) computer programming controls to ensure that each terminal user can obtain only that information which the user is authorized to use;

(5) creation and use of a safe place for storage of duplicate computer files;

(6) built-in program controls to ensure that each terminal is limited to the appropriate or authorized information that can be input, modified, or canceled from it;

(7) destruction or safeguarding of system documentation and data input forms; and

(8) creation of reports to provide for an audit trail and periodic review of file accessed, modifications, and deletions. All criminal justice intelligence information shall be identified as such.

History: En. Sec. 16, Ch. 525, L. 1979.

44-5-404. Manual equipment. In a manual criminal justice information system, information shall be protected as follows:

(1) provision of adequate physical security;

(2) marking of all criminal justice intelligence information and precautions against unauthorized copying; and

(3) establishment of a log of each external inquiry to reflect the identity of the inquirer, the date of inquiry, and the name of the files being queried.

History: En. Sec. 17, Ch. 525, L. 1979.

44-5-405. Personnel. Each automated or manual criminal justice information system, except those that are or may be maintained by courts of criminal jurisdiction, shall establish the following procedures to ensure that personnel security is achieved and maintained:

(1) Applicants for employment and persons presently employed to work with or in a computer center or manual system that processes criminal justice information are subject to investigation by the employing agency to establish their honesty and fitness to handle sensitive information. Consent to such an investigation may be a prerequisite to the processing of an employment application.

(2) The character and fitness of criminal justice information system personnel to handle sensitive information, including personnel working with manual criminal justice file systems and terminal operators as well as personnel working with the system at a central computer, shall be reviewed by the employing agency periodically. Serious violations or deficiencies under this section are grounds for dismissal.

(3) Each criminal justice agency shall develop and maintain an in-service training program and security manual to ensure that each employee who works with or has access to the criminal justice information system annually reviews and understands the nature and importance of the system's security provisions.

(4) With regard to automated systems, the criminal justice agency shall screen and may reject for employment and initiate or cause to be initiated administrative action relating to employees having direct access to criminal history record information as required by federal regulations in 28 C.F.R. section 20.21(f) or any amendment thereto.

History: En. Sec. 18, Ch. 525, L. 1979.

Cross-References

Code of Ethics, Title 2, ch. 2, part 1.

Official misconduct, 45-7-401.

Part 5

Criminal Intelligence Information Section

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

General duties of Attorney General, 2-15-501.

44-5-501. Creation of criminal intelligence information section — advisory council. (1) The department of justice may create a criminal intelligence information section.

(2) (a) If a section is created under subsection (1), the attorney general shall establish a criminal intelligence information advisory council in accordance with 2-15-122, consisting of one representative from the Montana chiefs of police association, one representative from the Montana sheriffs and peace officers association, one representative from the Montana county attorneys association, one member of the department of justice, a member of the judiciary committee of either the house of representatives or the senate, and a citizen at large.

(b) The representatives from the Montana chiefs of police association and the Montana sheriffs and peace officers association must be sworn officers of a participating agency.

(c) The department of justice member may not be an employee of the department involved in criminal intelligence or criminal investigation work.

(d) Members of the advisory council serve at the pleasure of the attorney general.

(e) The department shall provide staff and support services for the advisory council.

History: En. Sec. 1, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

44-5-502. Definitions. In this part the following definitions apply:

(1) "Advisory council" means the criminal intelligence information advisory council provided for in 44-5-501.

(2) "Section" means the criminal intelligence information section provided for in 44-5-501.

History: En. Sec. 2, Ch. 145, L. 1985.

44-5-503. Duties of section. The section may not initiate investigations to gather criminal intelligence information, but subject to standards and procedures provided by this part and to other limitations imposed by law, the section shall:

(1) establish and maintain liaison with participating law enforcement agencies to foster a meaningful exchange of criminal intelligence information;

(2) develop and maintain a system for collecting, reviewing, storing, referencing, indexing, and disseminating criminal intelligence information;

(3) receive and collect information from participating law enforcement agencies;

(4) develop an analytical capability to provide useful strategic and tactical intelligence reports;

(5) maintain the integrity and security of all information collected by the section; and

(6) develop methods of evaluating the effectiveness of the section in accomplishing its goals and in safeguarding the privacy of all individuals about whom the section has information.

History: En. Sec. 3, Ch. 145, L. 1985.

Cross-References

Teletypewriter communications system, Title 44, ch. 2, part 3.

Criminal justice information — collection and processing, Title 44, ch. 5, part 2.

44-5-504. Section standards and procedures. The attorney general, in conjunction with the department of justice and after considering recommendations of the advisory council, shall adopt standards and procedures for the operation of the section. The standards and procedures must ensure compliance with this part by the section and must include safeguards of individual privacy rights as provided in this chapter.

History: En. Sec. 8, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Cross-References

Montana Administrative Procedure Act — adoption and publication of rules, Title 2, ch. 4, part 3.

44-5-505. Section supervisor and personnel. (1) The attorney general shall designate a section supervisor.

(2) The department of justice may employ necessary personnel for the efficient and secure operation of the section, subject to approval of the personnel by the attorney general.

History: En. Sec. 4, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

44-5-506. Participating agencies. (1) Agencies eligible for participation in the section are:

(a) municipal police departments;

(b) sheriff's departments; and

(c) sections of the department of justice engaged in criminal investigation.

(2) A participant in the section must be an eligible agency that has been authorized by the attorney general to receive criminal intelligence information from the section under this part.

History: En. Sec. 6, Ch. 145, L. 1985; amd. Sec. 13, Ch. 503, L. 1985.

Cross-References

Sheriff's department, Title 7, ch. 32, part 21.

Municipal police force, Title 7, ch. 32, part 41.

Criminal investigation, Title 44, ch. 2, part 1.

44-5-507 through 44-5-510 reserved.

44-5-511. Functions of advisory council. The advisory council shall:

(1) recommend general policies for the operation of the section;

(2) recommend the approval or denial of an application from an eligible agency for participation in the section;

(3) recommend the suspension of a participant agency for due cause; and

(4) recommend, if appropriate, the reinstatement of a suspended participant agency.

History: En. Sec. 5, Ch. 145, L. 1985.

Cross-References

Creation of advisory councils, 2-15-122.

44-5-512 through 44-5-514 reserved.

44-5-515. Protection of individual privacy. The advisory council shall review and evaluate the implementation of the section's safeguards of individual privacy rights adopted pursuant to 44-5-504 and periodically inspect all records relating to dissemination of information to determine whether they are in compliance with this part and with the standards and procedures adopted by the section. The advisory council shall make an annual report to the attorney general.

History: En. Sec. 7, Ch. 145, L. 1985.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

CHAPTERS 6 THROUGH 9

RESERVED

CHAPTER 10

LAW ENFORCEMENT ACADEMY

Part 1 — General Provisions

44-10-101. Short title.
44-10-102. Purpose.
44-10-103. Establishment of academy.

Part 2 — Government of Academy

44-10-201. Department of justice to govern academy.
44-10-202. Powers and duties of department.
44-10-203. Sessions to be determined annually.

Part 3 — Officers Who Attend Academy

44-10-301. Eligibility.
44-10-302. Retention of employment rights.
44-10-303. Expenditure of funds by local governments authorized.

Chapter Cross-References

Training in victim assistance, 46-24-102.

Part 1

General Provisions

44-10-101. Short title. This chapter may be cited as the "Montana Law Enforcement Academy Act".

History: En. Sec. 1, Ch. 7, L. 1959; R.C.M. 1947, 75-5201.

44-10-102. Purpose. The purpose of this chapter shall be to establish a Montana law enforcement academy to provide Montana law enforcement officers and other qualified individuals with a means of securing training in the field of law enforcement.

History: En. Sec. 2, Ch. 7, L. 1959; R.C.M. 1947, 75-5202; amd. Sec. 1, Ch. 40, L. 1989.

44-10-103. Establishment of academy. There is hereby established a Montana law enforcement academy.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part); amd. Sec. 1, Ch. 431, L. 1985.

Part 2

Government of Academy

44-10-201. Department of justice to govern academy. The Montana law enforcement academy shall be governed by the department of justice.

History: En. Sec. 5, Ch. 7, L. 1959; amd. Sec. 1, Ch. 28, L. 1961; amd. Sec. 1, Ch. 88, L. 1969; R.C.M. 1947, 75-5205.

44-10-202. Powers and duties of department. The department of justice shall have the power and it shall be its duty to:

(1) establish qualifications for admission to the academy;

(2) select from among qualified applicants those officers and other individuals who are to attend the academy each year;

(3) determine the curriculum and methods of training for officers and other individuals attending the academy;

(4) select and hire staff as it considers necessary to implement this chapter;

(5) establish rules for the conduct of officers and other individuals enrolled at the academy;

(6) award appropriate certificates to officers and other individuals who successfully complete their training;

(7) provide for the keeping of permanent records of enrollment, attendance, and graduation and other records as the department considers necessary;

(8) make a yearly report in writing of the activities of the academy. Copies of this report shall be sent to the governor, attorney general, and secretary of state.

(9) do all other things necessary and desirable for the establishment and operation of the academy not inconsistent with this chapter or the constitution and statutes of the state of Montana;

(10) accept and expend grants from federal, state, county, and city governments or private persons, associations, or corporations.

History: En. Sec. 6, Ch. 7, L. 1959; amd. Sec. 2, Ch. 233, L. 1967; amd. Sec. 1, Ch. 331, L. 1971; R.C.M. 1947, 75-5206; amd. Sec. 2, Ch. 431, L. 1985; amd. Sec. 2, Ch. 40, L. 1989.

44-10-203. Sessions to be determined annually. The academy shall be in session for a period to be annually determined by the department of justice.

History: En. Sec. 3, Ch. 7, L. 1959; amd. Sec. 1, Ch. 233, L. 1967; R.C.M. 1947, 75-5203(part).

Part 3

Officers Who Attend Academy

44-10-301. Eligibility. All bona fide Montana law enforcement officers and other individuals who meet the qualifications established by the department of justice shall be eligible to apply for admission to the Montana law enforcement academy.

History: En. Sec. 4, Ch. 7, L. 1959; R.C.M. 1947, 75-5204; amd. Sec. 3, Ch. 40, L. 1989.

44-10-302. Retention of employment rights. All officers shall be paid their regular salary during their attendance at the academy, and time spent in such attendance shall not be deducted from the vacation to which any attending officer is entitled. No officer shall lose any pension, seniority, or other rights by reason of attendance at the academy.

History: En. Sec. 7, Ch. 7, L. 1959; R.C.M. 1947, 75-5207.

44-10-303. Expenditure of funds by local governments authorized. The expenditure of funds by any city, town, municipality, or county for the board, room, and travel expenses of the officers attending the academy shall be a lawful expenditure.

History: En. Sec. 8, Ch. 7, L. 1959; amd. Sec. 3, Ch. 233, L. 1967; R.C.M. 1947, 75-5208.

CHAPTER 11

MUTUAL ASSISTANCE
RIGHTS OF ASSISTING OFFICERS

Part 1 — General Provisions

44-11-101. Mutual assistance authorized — powers and duties of assisting officers.
44-11-102. Liability of assisted entity for obligation resulting from assistance.

Part 2 — Rights of Employment

44-11-201. Retention of rights of employment.
44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement.

Part 3 — Interstate Law Enforcement Mutual Aid Act

44-11-301. Short title.
44-11-302. Purpose.
44-11-303. Definitions.
44-11-304. Authorization to enter agreement — general content — authority of peace officer.
44-11-305. Detailed content of agreement.
44-11-306. Right of state in actions involving agreements.
44-11-307. Agreement not to relieve agency of duties.
44-11-308. Limitation of powers.
44-11-309. Submission of agreement to attorney general.
44-11-310. Filing of agreement.
44-11-311. Authorization to appropriate funds for purpose of agreement.
44-11-312. Effect of other law.

Part 1

General Provisions

44-11-101. Mutual assistance authorized — powers and duties of assisting officers. A peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement entity within the state of Montana. A peace officer, while in the jurisdiction of the requesting officer or entity and while on such request for assistance, has the same powers, duties, rights, privileges, and immunities as a peace officer of the requesting entity and is under the authority of the requesting officer or entity.

History: En. 11-1851 by Sec. 1, Ch. 337, L. 1977; R.C.M. 1947, 11-1851; amd. Sec. 1, Ch. 22, L. 1985.

Cross-References

Technical assistance by County Attorney Training Coordinator to law enforcement official, 44-4-103.

44-11-102. Liability of assisted entity for obligation resulting from assistance. A law enforcement entity requesting assistance under 44-11-101 shall indemnify the assisting peace officer, his legal representative in case of death, or the furnishing law enforcement entity for any liability or obligation to indemnify created by 2-9-305 that may result from the assistance furnished.

History: En. 11-1854 by Sec. 4, Ch. 337, L. 1977; R.C.M. 1947, 11-1854.

Part 2

Rights of Employment

44-11-201. Retention of rights of employment. A peace officer rendering assistance under 44-11-101 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for such service as for service rendered within the law enforcement entity in which he is normally employed.

History: En. 11-1852 by Sec. 2, Ch. 337, L. 1977; R.C.M. 1947, 11-1852.

44-11-202. Employing entity to pay normal expenses of assisting officer — reimbursement. (1) The law enforcement entity employing a peace officer who renders assistance shall make all wage, pension, and disability payments and payments for damage to clothing and equipment due to the officer as a result of the rendering of assistance and shall pay any medical expense incurred by the officer in rendering assistance for which the officer is not otherwise entitled to reimbursement by operation of law or a contract. The employing entity shall also provide workers' compensation coverage for its employees while they are rendering assistance.

(2) If it so requests, the law enforcement entity must be reimbursed by the law enforcement entity that requested the services for all payments made for wages and damage to clothing and equipment and for any medical expense for which neither the employing entity nor the officer is otherwise entitled to reimbursement by operation of law or a contract.

History: En. 11-1853 by Sec. 3, Ch. 337, L. 1977; R.C.M. 1947, 11-1853; amd. Sec. 26, Ch. 7, L. 1979.

Part 3

Interstate Law Enforcement Mutual Aid Act

44-11-301. Short title. This part shall be known and may be cited as the "Interstate Law Enforcement Mutual Aid Act".

History: En. Sec. 1, Ch. 318, L. 1983.

44-11-302. Purpose. It is the purpose of this part to permit one or more law enforcement agencies of this state to enter into mutual aid agreements, on the basis of mutual advantage, with one or more law enforcement agencies of any other state or the United States in order to facilitate and coordinate efficient, cooperative enforcement efforts directed at mutual law enforcement problems transcending jurisdictional boundaries and to insure the prompt and effective delivery of law enforcement and emergency services in areas that, due to geographic remoteness, population sparsity, and economic and other factors are in need of an increased law enforcement presence.

History: En. Sec. 2, Ch. 318, L. 1983.

44-11-303. Definitions. When used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Law enforcement agency" means a public agency lawfully established by statute or executive order that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, or game laws.

(2) "Law enforcement agency of this state" or "law enforcement agency of another (or any other) state" includes, respectively, a law enforcement agency of a political subdivision of this state and a law enforcement agency of a political subdivision of another state.

(3) "Mutual aid agreement" or "agreement" means an agreement between two or more law enforcement agencies, consistent with the purposes of this part.

(4) "Party law enforcement agency" means a law enforcement agency that is a party to a mutual aid agreement as set forth in this part.

(5) "Peace officer" has the meaning as defined in 46-1-202.

History: En. Sec. 3, Ch. 318, L. 1983; amd. Sec. 256, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In definition of peace officer substituted "46-1-202" for "46-1-201"; and made minor change in style.

44-11-304. Authorization to enter agreement — general content — authority of peace officer. (1) Any one or more law enforcement agencies of this state may enter into a mutual aid agreement with any one or more law enforcement agencies of any other state or the United States to provide the law enforcement or emergency services that all of the parties are authorized by law to perform. If required by applicable law, the agreement must be authorized and approved by the governing body of each party to the agreement.

(2) The agreement must fully set forth the powers, rights, and obligations of the parties to the agreement.

(3) Subject to 44-11-308, a mutual aid agreement may grant a peace officer of any party law enforcement agency acting within the territorial jurisdiction of any other party law enforcement agency authority to act as if he were a duly appointed and qualified peace officer of the law enforcement agency he is assisting.

History: En. Sec. 4, Ch. 318, L. 1983.

44-11-305. Detailed content of agreement. The agreement authorized by 44-11-304 must specify the following:

(1) its duration;

(2) the precise organization, composition, and nature of any separate legal entity created thereby;

(3) the purpose of the agreement;

(4) the manner of financing the agreement and establishing and maintaining a budget therefor;

(5) the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(7) the manner of acquiring, holding, and disposing of real and personal property used in the agreement;

(8) the minimum standards for law enforcement personnel implementing the provisions of the agreement;

(9) the respective liability of each party to the agreement for the actions of law enforcement officers when acting under the provisions of the agreement;

(10) the minimum insurance required of each party to the agreement;

(11) the exact chain of command or delegation of authority to be followed by law enforcement officials acting under the provisions of the agreement;

(12) the precise enforcement authority that the peace officers of each party law enforcement agency may exercise; and

(13) any other necessary and proper matters.

History: En. Sec. 5, Ch. 318, L. 1983.

44-11-306. Right of state in actions involving agreements. In any case or controversy involving performance or interpretation of or liability under a mutual aid agreement entered into between one or more law enforcement agencies of political subdivisions of this state and one or more law enforcement agencies of another state or of the United States, the parties to the agreement are the real parties in interest. This state may maintain an action against any law enforcement agency whose default, failure, performance, or other conduct caused or contributed to any liability incurred by this state.

History: En. Sec. 6, Ch. 318, L. 1983.

44-11-307. Agreement not to relieve agency of duties. No agreement made under this part may relieve any law enforcement agency of this state of any duty imposed upon it by law. Timely performance of such a duty by a joint board or other legal or administrative entity created by a mutual aid agreement may be offered in satisfaction of the duty.

History: En. Sec. 7, Ch. 318, L. 1983.

44-11-308. Limitation of powers. Except for the right granted by this part to jointly exercise powers, this part does not authorize any law enforcement agency of this state to exercise any power that it is not otherwise authorized to exercise.

History: En. Sec. 8, Ch. 318, L. 1983.

44-11-309. Submission of agreement to attorney general. (1) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the attorney general of Montana.

(2) The attorney general shall approve an agreement submitted to him under this part unless he finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Montana. If he disapproves an agreement, he shall provide a detailed, written statement to the governing bodies of the party law enforcement agencies.

(3) If the attorney general does not disapprove an agreement within 60 days after its submission to him, it is considered approved by him.

History: En. Sec. 9, Ch. 318, L. 1983.

44-11-310. Filing of agreement. Within 20 days after approval by the attorney general, an agreement made pursuant to this part must be filed in the office of:

(1) each clerk and recorder of each county of this state where the principal office of one of the parties to the agreement is located; and

(2) the secretary of state.

History: En. Sec. 10, Ch. 318, L. 1983.

44-11-311. Authorization to appropriate funds for purpose of agreement. Any law enforcement agency of this state may appropriate funds for and may sell, lease, or otherwise supply material to any entity created for the purpose of performance of an agreement and may provide such personnel or services therefor as are within its authority to furnish.

History: En. Sec. 11, Ch. 318, L. 1983.

44-11-312. Effect of other law. The procedures and remedies provided in this part apply to the exclusion of those remedies and procedures for interlocal agreements generally under Title 7, chapter 11, part 1.

History: En. Sec. 12, Ch. 318, L. 1983.

CHAPTER 12

SEIZURES RELATED TO CONTROLLED SUBSTANCES

Part 1 — General Provisions

44-12-101. Definition of controlled substance.
44-12-102. Things subject to forfeiture.
44-12-103. When property may be seized.
44-12-104. Summary forfeiture of certain controlled substances.

Part 2 — Procedure

44-12-201. Petition to institute forfeiture proceedings — summons — service.
44-12-202. Answer to allegations concerning use of property.
44-12-203. Presumption — procedure following answer or expiration of time for answering.
44-12-204. Proof required or permitted at hearing.
44-12-205. Disposition of property following hearing.
44-12-206. Disposition of proceeds of sale.

Chapter Cross-References

Seizure, forfeiture, and sale of alcoholic beverages, 16-6-106, 16-6-107.

Dangerous drugs, Title 45, ch. 9.

Search and seizure, Title 46, ch. 5.

Health and safety — controlled substances, Title 50, ch. 32.

Part 1

General Provisions

44-12-101. Definition of controlled substance. As used in this chapter, "controlled substance" means any substance designated as a dangerous drug pursuant to Title 50, chapter 32, parts 1 and 2.

History: En. Sec. 1, Ch. 529, L. 1979.

44-12-102. Things subject to forfeiture. (1) The following are subject to forfeiture:

(a) all controlled substances that have been manufactured, distributed, prepared, cultivated, compounded, processed, or possessed in violation of Title 45, chapter 9;

(b) all money, raw materials, products, and equipment of any kind that are used or intended for use in manufacturing, preparing, cultivating, compounding, processing, delivering, importing, or exporting any controlled substance in violation of Title 45, chapter 9, except items used or intended for use in connection with quantities of marijuana in amounts less than 60 grams;

(c) except as provided in subsection (2)(d), all property that is used or intended for use as a container for anything enumerated in subsection (1)(a) or (1)(b);

(d) except as provided in subsection (2), all conveyances, including aircraft, vehicles, and vessels, that are used or intended for use in any manner to facilitate the commission of a violation of Title 45, chapter 9;

(e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data, that are used or intended for use in violation of Title 45, chapter 9;

(f) all drug paraphernalia as defined in 45-10-101;

(g) everything of value furnished or intended to be furnished in exchange for a controlled substance in violation of Title 45, chapter 9; all proceeds traceable to such an exchange; and all money, negotiable instruments, and securities used or intended to be used to facilitate a violation of Title 45, chapter 9;

(h) any personal property constituting or derived from proceeds obtained directly or indirectly from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison; and

(i) real property, including any right, title, and interest in any lot or tract of land and any appurtenances or improvements, that is directly used or intended to be used in any manner or part to commit or facilitate the commission of or that is derived from or maintained by the proceeds resulting from a violation of Title 45, chapter 9, that is punishable by more than 5 years in prison. An owner's interest in real property is not subject to forfeit by reason of any act or omission unless it is proved that the act or omission was the owner's or was with his actual knowledge or express consent.

(2) (a) A conveyance used by a person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of Title 45, chapter 9.

(b) A conveyance is not subject to forfeiture under this section because of any act or omission established by the owner of the conveyance to have been committed or omitted without his knowledge or consent.

(c) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he neither had knowledge of nor consented to any violation of Title 45, chapter 9.

(d) No conveyance or container is subject to forfeiture under this section if it was used or intended for use in transporting less than 60 grams of marijuana.

History: En. Sec. 2, Ch. 529, L. 1979; amd. Sec. 8, Ch. 481, L. 1981; amd. Sec. 1, Ch. 180, L. 1983; amd. Sec. 1, Ch. 476, L. 1987; amd. Sec. 1, Ch. 652, L. 1989.

44-12-103. When property may be seized. (1) A peace officer who has probable cause to make an arrest for a violation of Title 45, chapter 9, probable cause to believe that a conveyance has been used or is intended to be used to unlawfully transport a controlled substance, or probable cause to believe that a conveyance has been used to keep, deposit, or conceal a controlled substance shall seize the conveyance so used or intended to be used or any conveyance in which a controlled substance is unlawfully possessed by an occupant. He shall immediately deliver a conveyance that he seizes to the offices of his law enforcement agency, to be held as evidence until forfeiture is declared or release ordered.

(2) All property subject to forfeiture under 44-12-102 may be seized by a peace officer under a search warrant issued by a district court having jurisdiction over the property. Seizure without a warrant may be made if:

(a) the seizure is incident to an arrest or a search under a search warrant issued for another purpose or an inspection under an administrative inspection warrant;

(b) the property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal proceeding or a forfeiture proceeding based on this chapter;

(c) the peace officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the peace officer has probable cause to believe that the property was used or is intended to be used in violation of Title 45, chapter 9, or in violation of Title 45, chapter 10, part 1.

History: En. Sec. 3, Ch. 529, L. 1979; amd. Sec. 9, Ch. 481, L. 1981; amd. Sec. 1, Ch. 489, L. 1989.

44-12-104. Summary forfeiture of certain controlled substances. Controlled substances that are possessed, transferred, offered for transfer, manufactured, prepared, cultivated, compounded, or processed in violation of Title 45, chapter 9, and that are seized under the provisions of this chapter are contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into the possession of the state and the owners of which are unknown are contraband and shall be summarily forfeited to the state.

History: En. Sec. 4, Ch. 529, L. 1979.

Part 2

Procedure

44-12-201. Petition to institute forfeiture proceedings — summons — service. A peace officer or an officer of an agency that seizes any property other than controlled substances under the provisions of this chapter shall, within 45 days of the seizure, file a petition to institute forfeiture proceedings with the clerk of the district court of the county in which the seizure occurs. The clerk shall issue a summons at the request of the petitioning party, who shall cause the same to be served upon all owners or claimants of the property by one of the following methods:

(1) upon an owner or claimant whose name and address are known, by personal service of a copy of the petition and summons as provided in the Montana Rules of Civil Procedure;

(2) upon an owner or claimant whose address is unknown but who is believed to have an interest in the property, by publication of the summons in one issue of a newspaper of general circulation in the county where the seizure occurred or, if there is no such newspaper, by publication in one issue of a newspaper of general circulation in an adjoining county, and by mailing

a copy of the petition and summons to the most recent address of such owner or claimant, if any, shown in the records of the department of justice.

History: En. Sec. 5, Ch. 529, L. 1979; amd. Sec. 1, Ch. 563, L. 1985.

Cross-References

Service of process, Rule 4, M.R.Civ.P. (see Title 25, ch. 20).

44-12-202. Answer to allegations concerning use of property. Within 20 days after the service of the petition and summons or publication of the summons, as provided in 44-12-201, the owner or claimant of the seized property shall file a verified answer to the allegations concerning the use of the property described in the petition to institute forfeiture proceedings. No extension of the time for filing the answer may be granted, and failure to answer within 20 days bars the owner or claimant from presenting evidence at any subsequent evidentiary hearing unless extraordinary circumstances exist.

History: En. Sec. 6, Ch. 529, L. 1979; amd. Sec. 2, Ch. 563, L. 1985.

Cross-References

Service of process, answer, Rules 4 and 12, M.R.Civ.P. (see Title 25, ch. 20).

44-12-203. Presumption — procedure following answer or expiration of time for answering. (1) There is a rebuttable presumption of forfeiture as to all property listed in 44-12-102, except property listed in 44-12-102(1)(i).

(2) If a verified answer to the petition is not filed within 20 days after the service of the petition and summons, the court upon motion shall order the property forfeited to the state.

(3) If a verified answer is filed within 20 days, the forfeiture proceedings must be set for hearing without a jury no sooner than 60 days after the answer is filed. Notice of the hearing must be given in the manner provided for service of the petition and summons.

History: En. Sec. 7, Ch. 529, L. 1979; amd. Sec. 2, Ch. 180, L. 1983; amd. Sec. 3, Ch. 563, L. 1985; amd. Sec. 2, Ch. 652, L. 1989; amd. Sec. 42, Ch. 16, L. 1991.

Compiler's Comments

1991 Amendment: In (3) substituted "no sooner than 60 days" for "not less than 60 days"; and made minor changes in style.

44-12-204. Proof required or permitted at hearing. In order to rebut the presumption of forfeiture:

(1) an owner of property who has a verified answer on file must prove that the property was not used for the purpose charged;

(2) an owner of property listed in 44-12-102(1)(g) who has a verified answer on file may prove in the alternative that the use of the property occurred without his knowledge or consent;

(3) a claimant of a security interest in the property who has a verified answer on file must prove that his security interest is bona fide and that it was created after a reasonable investigation of the moral responsibility, character, and reputation of the purchaser and without knowledge that the

property was being or was to be used for the purpose charged. However, no person who has a lien dependent upon possession for compensation to which he is legally entitled for making repairs or performing labor upon, furnishing supplies or materials for, or providing storage, repair, or safekeeping of any property and no person doing business under any law of this state or the United States relating to financial institutions, as defined in 32-6-103, loan companies, or licensed pawnbrokers or regularly engaged in the business of selling the property or of purchasing conditional sales contracts for the property may be required to prove that his security interest was created after a reasonable investigation of the moral responsibility, character, and reputation of the owner, purchaser, or person in possession of the property when it was brought to such person.

History: En. Sec. 8, Ch. 529, L. 1979; amd. Sec. 3, Ch. 180, L. 1983.

44-12-205. Disposition of property following hearing. (1) If the court finds that the property was not used for the purpose charged or that the property listed in 44-12-102(1)(g) was used without the knowledge or consent of the owner, it shall order the property released to the owner of record as of the date of the seizure.

(2) If the court finds that the property was used for the purpose charged and that the property listed in 44-12-102(1)(g) was used with the knowledge or consent of the owner, the property shall be disposed of as follows:

(a) If proper proof of his claim is presented at the hearing by the holder of a security interest, the court shall order the property released to the holder of the security interest if the amount due him is equal to or in excess of the value of the property as of the date of seizure, it being the purpose of this chapter to forfeit only the right, title, or interest of the owner. If the amount due the holder of the security interest is less than the value of the property, the property, if it is sold, must be sold at public auction by the law enforcement agency that seized the property in the same manner provided by law for the sale of property under execution or the law enforcement agency may return the property to the holder of the security interest without proceeding with an auction. The property may not be sold to an officer or employee of the law enforcement agency that seized the property or to a person related to an officer or employee by blood or marriage.

(b) If no claimant exists and the confiscating agency wishes to retain the property for its official use, it may do so. If such property is not to be retained, it must be sold as provided in subsection (2)(a).

(c) If a claimant who has presented proper proof of his claim exists and the confiscating agency wishes to retain the property for its official use, it may do so provided it compensates the claimant in the amount of the security interest outstanding at the time of the seizure.

(3) In making a disposition of property under this chapter, the court may take any action to protect the rights of innocent persons.

History: En. Sec. 9, Ch. 529, L. 1979; amd. Sec. 4, Ch. 180, L. 1983; amd. Sec. 2, Ch. 476, L. 1987; amd. Sec. 2, Ch. 489, L. 1989.

Cross-References

Property subject to execution, Title 25, ch. 13, part 5.

Property exempt from execution, Title 25, ch. 13, part 6.

Sale on execution, Title 25, ch. 13, part 7.

Validity of security agreement and rights of parties thereto, Title 30, ch. 9, part 2.

Alienability of debtor's rights — judicial process, 30-9-311.

44-12-206. Disposition of proceeds of sale. (1) Whenever property is seized, forfeited, and sold under the provisions of this chapter, the net proceeds of the sale must be distributed as follows:

(a) to the holders of security interests who have presented proper proof of their claims, if any, up to the amount of their interests in the property;

(b) the remainder, if any, to the county treasurer of the county in which the property was seized, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(c) through (1)(e);

(c) if the property was seized within the corporate limits of a city or town by a law enforcement agency of that city or town, the remainder, if any, to the city or town treasurer, who shall establish and maintain a drug forfeiture account and deposit the remainder into the account, except as provided in subsections (1)(d) and (1)(e);

(d) if the property was seized by an employee of the state, the remainder, if any, to the account established in subsection (3), except as provided in subsection (1)(e); and

(e) if the property was seized as a result of the efforts of more than one law enforcement agency, the remainder, if any, to the accounts required by this subsection (1), pro rata in the proportions represented by the agencies' expenses of investigation, as determined by the attorney general.

(2) All proceeds from any source that are deposited into a county, city, or town drug forfeiture account must in each fiscal year be appropriated to and remain available until expended by the confiscating agency for drug laws enforcement and education concerning drugs.

(3) Net proceeds received by the state under subsections (1)(d) and (1)(e) must be deposited in an account in the state special revenue fund to the credit of the department of justice. The department may expend the money in the account only for purposes of enforcement of drug laws. An amount up to $125,000 each year is statutorily appropriated, as provided in 17-7-502, to the attorney general for enforcement of drug laws. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4.

(4) The attorney general shall provide the legislature with a detailed, written report of the amounts and property credited to the account no later than 4 months after the end of each fiscal year. The attorney general may not disclose any information that would compromise any investigation or prosecution.

History: En. Sec. 10, Ch. 529, L. 1979; amd. Sec. 5, Ch. 180, L. 1983; amd. Sec. 3, Ch. 476, L. 1987; amd. Sec. 2, Ch. 690, L. 1991.

Compiler's Comments

1991 Amendment: In (3), in second sentence after "account", deleted "as appropriated by the legislature" and inserted third and fourth sentences statutorily appropriating up to $125,000 a year to Attorney General for enforcement; and inserted (4) requiring that Attorney General report to the Legislature no later than 4 months after the end of each fiscal year. Amendment effective July 1, 1991.

Cross-References

Proceeds — secured party's rights on disposition of collateral, 30-9-306.

Priority of certain liens arising by operation of law, 30-9-310.

Priorities among conflicting security interests in the same collateral, 30-9-312.

CHAPTER 13

SPECIAL LAW ENFORCEMENT ASSISTANCE FUNDING

Part 1 — Special Law Enforcement Assistance Account

44-13-101. Law enforcement assistance account created.
44-13-102. Federal forfeitures deposited in account.
44-13-103. Limitations on use of special law enforcement assistance account.

Part 1

Special Law Enforcement Assistance Account

44-13-101. Law enforcement assistance account created. There is an account in the federal special revenue fund defined in 17-2-102 to be known as the special law enforcement assistance account.

History: En. Sec. 1, Ch. 625, L. 1985.

44-13-102. Federal forfeitures deposited in account. Property and money forfeited under federal law and provided to the state by the federal government to support state and local law enforcement programs must be deposited to the special law enforcement assistance account established in 44-13-101. An amount up to $125,000 each fiscal year is statutorily appropriated, as provided in 17-7-502, to the attorney general for the support of state and local law enforcement programs. Any expenditure in excess of $125,000 each fiscal year requires approval through budget amendment, as provided in Title 17, chapter 7, part 4.

History: En. Sec. 2, Ch. 625, L. 1985; amd. Sec. 3, Ch. 690, L. 1991.

Compiler's Comments

1991 Amendment: Inserted second and third sentences statutorily appropriating up to $125,000 each fiscal year to Attorney General for support of state and local enforcement programs. Amendment effective July 1, 1991.

44-13-103. Limitations on use of special law enforcement assistance account. (1) After property is credited to the account, the attorney general may:

(a) transfer the property to any local or state law enforcement agency to be used for criminal investigation purposes;

(b) sell the property by public sale;

(c) destroy any illegal or controlled substances and sell or destroy raw materials, products, and equipment used or intended for use in manufacturing, compounding, or processing a controlled substance;

(d) compromise and pay claims against the property; and

(e) make any other disposition of the property authorized by law.

(2) Money and proceeds from property credited to the account may be used by the attorney general for:

(a) the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell seized, detained, or forfeited property, including but not limited to payment for contract services and reimbursement to a federal, state, or local agency for its expenses;

(b) the payment of awards for information or assistance leading to a criminal proceeding or a civil forfeiture proceeding;

(c) the compromise and payment of claims against property;

(d) the payment of sums for criminal investigation purposes, including but not limited to:

(i) payment of informants;

(ii) use by undercover agents to purchase unlawful substances, including, without limitation, counterfeit or real controlled substances, pornographic materials, stolen property, or other contraband;

(iii) use by undercover agents as gambling front money; and

(iv) payment of overtime to state or local law enforcement officers when engaged in special criminal investigations;

(e) the payment of funds into the account created by 53-9-109; and

(f) matching federal grants for criminal investigation purposes.

(3) The attorney general shall, as provided in 5-11-210, submit to the legislature a detailed written report of the amounts and property credited to the account and of the disposition of money and property credited to the account, but may not make any disclosure that would compromise any investigation or prosecution.

History: En. Sec. 3, Ch. 625, L. 1985; amd. Sec. 1, Ch. 206, L. 1987; amd. Sec. 36, Ch. 112, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (3), after "shall", substituted "as provided in 5-11-210, submit to the legislature" for "give the legislature not later than 4 months after the end of each fiscal year". Amendment effective March 20, 1991.

TITLE 45

CRIMES

Ch.
1. General Preliminary Provisions.
2. General Principles of Liability.
3. Justifiable Use of Force.
4. Inchoate Offenses.
5. Offenses Against the Person.
6. Offenses Against Property.
7. Offenses Against Public Administration.
8. Offenses Against Public Order.
9. Dangerous Drugs.
10. Model Drug Paraphernalia Act.

CHAPTER 1

GENERAL PRELIMINARY PROVISIONS

Part 1 — Construction and Applicability

45-1-101. Short title.
45-1-102. General purposes and principles of construction.
45-1-103. Application to offenses committed before and after enactment.
45-1-104. Other limitations on applicability.

Part 2 — Classification and Limitations

45-1-201. Classification of offenses.
45-1-202 through 45-1-204 reserved.
45-1-205. General time limitations.
45-1-206. Periods excluded from limitation.

Part 1

Construction and Applicability

45-1-101. Short title. This title shall be known and may be cited as the "Criminal Code of 1973".

History: En. 94-1-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-101.

45-1-102. General purposes and principles of construction. (1) The general purposes of the provisions governing the definition of offenses are:

(a) to forbid and prevent conduct that unjustifiably and inexcusably inflicts or threatens harm to individual or public interests;

(b) to safeguard conduct that is without fault from condemnation as criminal;

(c) to give fair warning of the nature of the conduct declared to constitute an offense;

(d) to differentiate on reasonable grounds between serious and minor offenses.

(2) The rule of the common law that penal statutes are to be strictly construed has no application to this code. All its provisions are to be construed according to the fair import of their terms with a view to effect its object and to promote justice.

History: En. 94-1-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-102.

Cross-References

Reasons for punishing offenders, Art. II, sec. 28, Mont. Const.

Criminal act and mental state, 45-2-103.

Sentence and judgment, 46-18-101, 46-18-102.

45-1-103. Application to offenses committed before and after enactment. (1) The provisions of this code apply to any offense defined in this code and committed after January 1, 1974.

(2) Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this title and Title 46 govern the construction of and punishment for any offense defined outside of this code and committed after January 1, 1974, as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before January 1, 1974. Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted.

History: En. 94-1-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 359, L. 1977; R.C.M. 1947, 94-1-103.

Cross-References

Other limitations as to applicability, 45-1-104.

Classification and limitations, 45-1-201 through 45-1-206.

Definitions and state of mind, 45-2-101 through 45-2-104.

Other factors affecting individual liability, 45-2-201 through 45-2-213.

Liability for acts committed by another, 45-2-301 through 45-2-312.

Justifiable use of force, 45-3-101 through 45-3-115.

45-1-104. Other limitations on applicability. (1) This code does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, or other remedy authorized by law to be recovered, and the civil injury is not merged into the offense.

(2) No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state. However, this provision does not affect the power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order, civil judgment, or decree.

History: En. 94-1-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-104.

Cross-References

Sentence, 46-18-201 through 46-18-203.

Part 2

Classification and Limitations

45-1-201. Classification of offenses. (1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section, and the sentence that may be imposed upon conviction thereof shall be governed by this title and Title 46.

History: En. 94-1-105 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 8, Ch. 359, L. 1977; R.C.M. 1947, 94-1-105.

Cross-References

Application to offenses committed before and after enactment, 45-1-103.

Time limitations, 45-1-205, 45-1-206.

Definitions of "felony" and "misdemeanor", 45-2-101.

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

Burglary, 45-6-204.

Compounding a felony, 45-7-305.

When no penalty is specified, 46-18-211 through 46-18-213.

45-1-202 through 45-1-204 reserved.

45-1-205. General time limitations. (1) (a) A prosecution for deliberate, mitigated, or negligent homicide may be commenced at any time.

(b) A prosecution under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 may be commenced within 5 years after the victim reaches the age of 18 if the victim was less than 18 years old at the time the offense occurred.

(2) Except as otherwise provided by law, prosecutions for other offenses are subject to the following periods of limitation:

(a) A prosecution for a felony must be commenced within 5 years after it is committed.

(b) A prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) if the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) in any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) The period prescribed in subsection (2) shall be extended in a prosecution for unlawful use of a computer, and prosecution shall be brought within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(5) The period prescribed in subsection (2) is extended in a prosecution for misdemeanor fish and wildlife violations under Title 87, and prosecution must be brought within 3 years after an offense is committed.

(6) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(7) A prosecution is commenced either when an indictment is found or an information or complaint is filed.

History: En. 94-1-106 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 359, L. 1977; R.C.M. 1947, 94-1-106; amd. Sec. 4, Ch. 485, L. 1981; amd. Sec. 1, Ch. 227, L. 1985; amd. Sec. 1, Ch. 294, L. 1989; amd. Sec. 1, Ch. 435, L. 1989; amd. Sec. 1, Ch. 277, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (5) to provide a 3-year statute of limitations on misdemeanor fish and wildlife violations. Amendment effective July 1, 1991.

Cross-References

Classification of offenses, 45-1-201.

Definitions of "felony" and "misdemeanor", 45-2-101.

Homicide, 45-5-102 through 45-5-104.

Theft and related offenses, Title 45, ch. 6, part 3.

Methods of commencing prosecution, Title 46, ch. 11, part 1.

Filing of information, 46-11-201, 46-11-203.

Guardians of incapacitated persons, 72-5-301 through 72-5-325.

45-1-206. Periods excluded from limitation. The period of limitation does not run during:

(1) any period in which the offender is not usually and publicly resident within this state or is beyond the jurisdiction of this state;

(2) any period in which the offender is a public officer and the offense charged is theft of public funds while in public office; or

(3) a prosecution pending against the offender for the same conduct, even if the indictment, complaint, or information which commences the prosecution is dismissed.

History: En. 94-1-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-1-107.

Cross-References

Rules for determining residence, 1-1-215.

General time limitations, 45-1-205.

Definition of "offense", 45-2-101.

Filing of information, 46-11-201, 46-11-203.

CHAPTER 2

GENERAL PRINCIPLES OF LIABILITY

Part 1 — Definitions and State of Mind

45-2-101. General definitions.
45-2-102. Substitutes for negligence and knowledge.
45-2-103. General requirements of criminal act and mental state.
45-2-104. Absolute liability.

Part 2 — Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result.
45-2-202. Voluntary act.
45-2-203. Responsibility — intoxicated condition.
45-2-204 through 45-2-210 reserved.
45-2-211. Consent as a defense.
45-2-212. Compulsion.
45-2-213. Entrapment.

Part 3 — Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another.
45-2-302. When accountability exists.
45-2-303. Separate conviction of person accountable.
45-2-304 through 45-2-310 reserved.
45-2-311. Criminal responsibility of corporations.
45-2-312. Accountability for conduct of corporation.

Part 1

Definitions and State of Mind

45-2-101. General definitions. Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:

(1) "Acts" has its usual and ordinary meaning and includes any bodily movement, any form of communication, and where relevant, a failure or omission to take action.

(2) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(3) "Another" means a person or persons, as defined in this code, other than the offender.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested, but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which results in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Computer" means an electronic device that performs logical, arithmetic, and memory functions by the manipulation of electronic or magnetic impulses and includes all input, output, processing, storage, software, or communication facilities that are connected or related to such a device in a system or network.

(9) "Computer network" means the interconnection of communication systems between computers or computers and remote terminals.

(10) "Computer program" means an instruction or statement or a series of instructions or statements, in a form acceptable to a computer, that in actual or modified form permits the functioning of a computer or computer system and causes it to perform specified functions.

(11) "Computer services" include but are not limited to computer time, data processing, and storage functions.

(12) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with the operation of a computer system.

(13) "Computer system" means a set of related, connected, or unconnected devices, computer software, or other related computer equipment.

(14) "Conduct" means an act or series of acts and the accompanying mental state.

(15) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(16) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(17) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is or is not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(18) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or to injury to his or its business or occupation.

(19) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(21) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(22) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(23) A "frisk" is a search by an external patting of a person's clothing.

(24) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(25) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(26) A "house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(27) "Human being" means a person who has been born and is alive.

(28) An "illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(29) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(30) "Intoxicating substance" means any controlled substance as defined in Title 50, chapter 32, and any alcoholic beverage, including but not limited to any beverage containing 1/2 of 1% or more of alcohol by volume. The foregoing definition does not extend to dealcoholized wine or to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than 1/2 of 1% of alcohol by volume.

(31) An "involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(32) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(33) "Knowingly"—a person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(34) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(35) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as a result of the influence of an intoxicating substance.

(36) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or a fine, or both, or the sentence imposed is imprisonment in the state prison for any term of 1 year or less.

(37) "Negligently"—a person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or when he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. "Gross deviation" means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(38) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession, whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(39) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, or transfer of title to, interest in, or possession of property.

(40) "Occupied structure" means any building, vehicle, or other place suitable for human occupancy or night lodging of persons or for carrying on business, whether or not a person is actually present. Each unit of a building

consisting of two or more units separately secured or occupied is a separate occupied structure.

(41) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(42) "Offense" means a crime for which a sentence of death or of imprisonment or a fine is authorized. Offenses are classified as felonies or misdemeanors.

(43) "Official detention" means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(44) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(45) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(46) "Owner" means a person other than the offender who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(47) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(48) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(49) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(50) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(51) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

(52) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(53) "Premises" includes any type of structure or building and any real property.

(54) "Property" means any tangible or intangible thing of value. Property includes but is not limited to:

(a) real estate;
(b) money;
(c) commercial instruments;
(d) admission or transportation tickets;
(e) written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;
(f) things growing on, affixed to, or found on land and things which are part of or affixed to any building;
(g) electricity, gas, and water;
(h) birds, animals, and fish which ordinarily are kept in a state of confinement;
(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof;
(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement; and
(k) electronic impulses, electronically processed or produced data or information, commercial instruments, computer software or computer programs, in either machine- or human-readable form, computer services, any other tangible or intangible item of value relating to a computer, computer system, or computer network, and any copies thereof.

(55) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has no authority to defeat or impair, even though the offender himself may have an interest in the property.

(56) "Public place" means any place to which the public or any substantial group thereof has access.

(57) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firefighters, and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. The term does not include witnesses. The term "public servant" includes one who has been elected or designated to become a public servant.

(58) "Purposely"—a person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(59) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

(60) “Sexual contact” means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(61) “Sexual intercourse” means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(62) “Solicit” or “solicitation” means to command, authorize, urge, incite, request, or advise another to commit an offense.

(63) “State” or “this state” means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(64) “Statute” means any act of the legislature of this state.

(65) “Stolen property” means property over which control has been obtained by theft.

(66) A “stop” is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(67) “Tamper” means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(68) “Threat” means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of a criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another’s legal claim or defense.

(69) (a) “Value” means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be considered the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be considered the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(iii) The value of electronic impulses, electronically produced data or information, computer software or programs, or any other tangible or intangible item relating to a computer, computer system, or computer network shall be considered to be the amount of economic loss that the owner of the item might reasonably suffer by virtue of the loss of the item. The determination of the amount of such economic loss includes but is not limited to consideration of the value of the owner's right to exclusive use or disposition of the item.

(b) When it cannot be determined if the value of the property is more or less than $300 by the standards set forth in subsection (69)(a) above, its value shall be considered to be an amount less than $300.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(70) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(71) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(72) "Witness" means a person whose testimony is desired in any official proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding.

History: En. 94-2-101 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 190, L. 1975; amd. Sec. 1, Ch. 405, L. 1975; amd. Sec. 1, Ch. 443, L. 1975; amd. Sec. 10, Ch. 359, L. 1977; amd. Sec. 3, Ch. 489, L. 1977; R.C.M. 1947, 94-2-101; amd. Sec. 1, Ch. 10, L. 1979; amd. Sec. 1, Ch. 485, L. 1981; amd. Sec. 15, Ch. 3, L. 1985.

Cross-References

Acts

Definition of "conduct", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Voluntary act, 45-2-202.

Theft, 45-6-301.

Official misconduct, 45-7-401.

Administrative Proceeding

Local Government, Title 7.

Another

Accountability for conduct of another, 45-2-301.

Benefit

Definition of "pecuniary benefit", 45-2-101.

Bribery in official and political matters, 45-7-101.

Gifts to public servants by persons subject to their jurisdiction, 45-7-104.

Bodily Injury

Definition of "serious bodily injury", 45-2-101.

Justifiable use of force, 45-3-101 through 45-3-115.

Assault, 45-5-201, 45-5-202.

Intimidation, 45-5-203.

Robbery, 45-5-401.

Sexual intercourse without consent, 45-5-503.

Criminal mischief and arson, 45-6-101 through 45-6-103.

Cohabit

Incest, 45-5-507.

Common Scheme

Issuing a bad check, 45-6-316.

Forgery, 45-6-325.

Conduct

Definition of "acts", 45-2-101.

Substitutes for negligence and knowledge, 45-2-102.

Responsibility — intoxicated or drugged condition, 45-2-203.

Liability for acts committed by or for another, 45-2-301 through 45-2-312.

Assault, 45-5-201.

Effect of multiple charges and former prosecutions, 46-11-410, 46-11-503 through 46-11-505.

Conviction

Waiver of counsel, 46-8-102.

Imposition of sentence, 46-18-201 through 46-18-203.

Postconviction hearing, Title 46, ch. 21.

Dangerous Drugs

Definitions, 45-9-111.

Deception

Definition of "knowingly", 45-2-101.

Theft, 45-6-301.

Deceptive practices, 45-6-317, 45-6-318.

Defamatory Matter

Criminal defamation, 45-8-212.

Deprive

Theft and related offenses, Title 45, ch. 6, part 3.

Deviate Sexual Relations

Deviate sexual conduct, 45-5-505.

Felony

Provisions of this code to be liberally construed, 45-1-102.

Classifications and limitations, 45-1-201 through 45-1-206.

Definition of "misdemeanor", 45-2-101.

Deliberate homicide, 45-5-102.

Sexual intercourse without consent, 45-5-503.

Burglary, 45-6-204.

Compounding a felony, 45-7-305.

When no penalty is specified, 46-18-213.

Food Stamp or Coupon

"Food stamp or coupon" defined, 45-6-312.

Forcible Felony

Justifiable use of force — definition, 45-3-101.

Use of force by aggressor, 45-3-105.

Frisk

Stop and frisk, 46-5-401, 46-5-402.

Government

Offenses against public administration, Title 45, ch. 7.

Harm

Bribery in official and political matters, 45-7-101.

Threats and other improper influence in official and political matters, 45-7-102.

House of Prostitution

Promoting prostitution, 45-5-602.

Aggravated promotion of prostitution, 45-5-603.

Evidence in cases of promotion, 45-5-604.

Human Being

Offenses against the person, Title 45, ch. 5.

Illegal Article

Transferring illegal articles or unauthorized communication, 45-7-307.

Inmate

Promoting prostitution, 45-5-602.

Aggravated promotion of prostitution, 45-5-603.

Evidence in cases of promotion, 45-5-604.

Intoxicating Substance

Provisions generally applicable to sexual crimes, 45-5-511.

Unlawful transactions with children, 45-5-623.

Unlawful possession of an intoxicating substance by children, 45-5-624.

Involuntary Act

General requirements of criminal act and mental state, 45-2-103.

Absolute liability, 45-2-104.

Voluntary act, 45-2-202.

Juror

Definition of "public servant", 45-2-101.

Bribery in official and political matters, 45-7-101.

Threats or other improper influence in official and political matters, 45-7-102.

Knowingly

Definition of "purposely", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Mentally Defective

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Consent as a defense, 45-2-211.

Sexual intercourse without consent, 45-5-503.

Mental competency of accused, Title 46, ch. 14.

Mentally Incapacitated

General requirements of criminal act and mental state, 45-2-103.

Responsibility — intoxicated or drugged condition, 45-2-203.

Consent as a defense, 45-2-211.

Sexual intercourse without consent, 45-5-503.

Misdemeanor

Application of code to offenses committed before and after enactment, 45-1-103.

Classification of offenses, 45-1-201.

General time limitations, 45-1-205.

Definition of "felony", 45-2-101.

Official misconduct, 45-7-401.

Violation of 61-8-304 not a misdemeanor, 61-8-718.

Negligently

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Negligent homicide, 45-5-104.

Assault, 45-5-201.

Negligent arson, 45-6-102.

Obtain
Theft and related offenses, Title 45, ch. 6, part 3.
Obtains or Exerts Control
Definition of "obtain", 45-2-101.
Theft and related offenses, Title 45, ch. 6, part 3.
Occupied Structure
Definition of "premises", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal mischief and arson, 45-6-101 through 45-6-103.
Criminal trespass and burglary, 45-6-201 through 45-6-205.
Offense
Other limitations on applicability of code, 45-1-104.
Classification of offenses, 45-1-201.
Definition of "felony", 45-2-101.
Definition of "misdemeanor", 45-2-101.
Official Detention
Escape, 45-7-306.
Official Proceeding
Perjury, 45-7-201.
Other State
Definition of "state" or "this state", 45-2-101.
Owner
Theft and related offenses, Title 45, ch. 6, part 3.
Party Official
Bribery in official and political matters, 45-7-101.
Threats and other improper influence in official and political matters, 45-7-102.
Peace Officer
Use of force to prevent escape, 45-3-106.
Use of force in resisting arrest, 45-3-108.
Resisting arrest, 45-7-301.
Obstructing a peace officer or other public servant, 45-7-302.
Failure to aid a peace officer, 45-7-304.
Escape, 45-7-306.
Search and seizure, Title 46, ch. 5.
Arrest by a peace officer, 46-6-210, 46-6-211, 46-6-310, 46-6-313, 46-6-402, 46-6-405 through 46-6-411.
Pecuniary Benefit
Definition of "benefit", 45-2-101.
Bribery and corrupt influence, 45-7-101 through 45-7-104.
Physically Helpless
Definition of "mentally defective", 45-2-101.
Definition of "mentally incapacitated", 45-2-101.
Consent as a defense, 45-2-211.
Sexual crimes, Title 45, ch. 5, part 5.
Possession
Definition of "obtain", 45-2-101.
Definition of "obtains or exerts control", 45-2-101.
Possession of burglary tools, 45-6-205.
Theft, 45-6-301.
Illegal branding or altering or obscuring a brand, 45-6-327.
Premises
Definition of "occupied structure", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal mischief and arson, 45-6-101 through 45-6-103.
Criminal trespass and burglary, 45-6-201 through 45-6-205.
Property
Terms relating to instruments and other writings, 1-1-203.
Property of Another
Definition of "property", 45-2-101.
Theft and related offenses, Title 45, ch. 6, part 3.
Public Place
Prostitution and related offenses, 45-5-601 through 45-6-604.
Conduct disruptive of public order, 45-8-101 through 45-8-114.
Public Servant
Definition of "juror", 45-2-101.
Offenses against public administration, Title 45, ch. 7.
Purposely
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
General requirements of criminal act and mental state, 45-2-103.
Security Interest
Defined, 45-6-315.
Serious Bodily Injury
Definition of "bodily injury", 45-2-101.
Assault, 45-5-201.
Aggravated kidnapping — lesser sentence where release of victim and no serious bodily injury, 45-5-303.
Sexual Contact
Sexual assault, 45-5-502.
Sexual Intercourse
Definition of "sexual contact", 45-2-101.
Sexual crimes, Title 45, ch. 5, part 5.
State
Definition of "other state", 45-2-101.
Jurisdiction, Title 46, ch. 2.
Stolen Property
Definition of "obtains or exerts control", 45-2-101.
Robbery, 45-5-401.
Criminal trespass and burglary, 45-6-201 through 45-6-205.
Theft and related offenses, Title 45, ch. 6, part 3.
Stop
Definition of "frisk", 45-2-101.

Stop and frisk, 46-5-401, 46-5-402.
Arrest, Title 46, ch. 6.

Tamper
Criminal mischief and arson, 45-6-101 through 45-6-103.
Criminal trespass, 45-6-201 through 45-6-203.

Threat
Attempt, 45-4-103.
Intimidation, 45-5-203.
Theft, 45-6-301.
Threats and other improper influence in official and political matters, 45-7-102.

Value
Definition of "common scheme", 45-2-101.
Criminal mischief, 45-6-101.
Theft and related offenses, Title 45, ch. 6, part 3.

Vehicle
Definition of "premises", 45-2-101.
Definition of "property", 45-2-101.
Criminal trespass and burglary, 45-6-201 through 45-6-205.
Theft and related offenses, Title 45, ch. 6, part 3.

Weapon
Definition of "bodily injury", 45-2-101.
Definition of "serious bodily injury", 45-2-101.
Assault, 45-5-201 through 45-5-204.
Concealed weapons, 45-8-316 through 45-8-318, 45-8-320 through 45-8-331.

Witness
Definition of "official proceeding", 45-2-101.
Tampering with witnesses and informants, 45-7-206.
Summoning witnesses to testify, 46-15-112, 46-15-113, 46-15-120.

45-2-102. Substitutes for negligence and knowledge. When the law provides that negligence suffices to establish an element of an offense, such element also is established if a person acts purposely or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts purposely.

History: En. 94-2-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-110.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "purposely", 45-2-101.
General requirements of criminal act and mental state, 45-2-103.

45-2-103. General requirements of criminal act and mental state. (1) Except for deliberate homicide as defined in 45-5-102(1)(b) or an offense which involves absolute liability, a person is not guilty of an offense unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in subsections (33), (37), and (58) of 45-2-101.

(2) In deliberate homicide under 45-5-102(1)(b), the offender must act while having the mental state of purposely or knowingly only as to the underlying felony referred to in 45-5-102(1)(b).

(3) The existence of a mental state may be inferred from the acts of the accused and the facts and circumstances connected with the offense.

(4) If the statute defining an offense prescribes a particular mental state with respect to the offense as a whole without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(5) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(6) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(7) If a person's reasonable belief is a defense under subsection (6), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(8) Any defense based upon this section is an affirmative defense.

History: En. 94-2-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 359, L. 1977; R.C.M. 1947, 94-2-103; amd. Sec. 1, Ch. 580, L. 1979; amd. Sec. 5, Ch. 485, L. 1981; amd. Sec. 2, Ch. 610, L. 1987.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

Absolute liability, 45-2-104.

Inference of mental state in deliberate homicide, 45-5-112.

45-2-104. Absolute liability. A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in subsections (33), (37), and (58) of 45-2-101 only if the offense is punishable by a fine not exceeding $500 or the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described.

History: En. 94-2-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 359, L. 1977; R.C.M. 1947, 94-2-104; amd. Sec. 6, Ch. 485, L. 1981; amd. Sec. 1, Ch. 350, L. 1987.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "purposely", 45-2-101.

General requirements of criminal act and mental state, 45-2-103.

Voluntary act, 45-2-202.

Part 2

Other Factors Affecting Individual Liability

45-2-201. Causal relationship between conduct and result. (1) Conduct is the cause of a result if:

(a) without the conduct the result would not have occurred; and

(b) any additional causal requirements imposed by the specific statute defining the offense are satisfied.

(2) If purposely or knowingly causing a result is an element of an offense and the result is not within the contemplation or purpose of the offender, either element can nevertheless be established if:

(a) the result differs from that contemplated only in the respect that a different person or different property is affected or that the injury or harm caused is less than contemplated; or

(b) the result involves the same kind of harm or injury as contemplated but the precise harm or injury was different or occurred in a different way, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

(3) If negligently causing a particular result is an element of an offense and the result is not within the risk of which the offender is aware or should be aware, either element can nevertheless be established if:

(a) the actual result differs from the probable result only in the respect that a different person or different property is affected or that the actual injury or harm is less; or

(b) the actual result involves the same kind of injury or harm as the probable result, unless the actual result is too remote or accidental to have a bearing on the offender's liability or on the gravity of the offense.

History: En. 94-2-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-105.

Cross-References

Definition of "conduct", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "purposely", 45-2-101.

45-2-202. Voluntary act. A material element of every offense is a voluntary act, which includes an omission to perform a duty which the law imposes on the offender and which he is physically capable of performing, except for deliberate homicide under 45-5-102(1)(b) for which there must be a voluntary act only as to the underlying felony. Possession is a voluntary act if the offender knowingly procured or received the thing possessed or was aware of his control thereof for a sufficient time to have been able to terminate his control.

History: En. 94-2-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-102; amd. Sec. 3, Ch. 610, L. 1987.

Cross-References

Definition of "act", 45-2-101.
Definition of "conduct", 45-2-101.
Definition of "involuntary act", 45-2-101.
Definition of "possession", 45-2-101.
Absolute liability, 45-2-104.

45-2-203. Responsibility — intoxicated condition. A person who is in an intoxicated condition is criminally responsible for his conduct and an intoxicated condition is not a defense to any offense and may not be taken into consideration in determining the existence of a mental state which is an element of the offense unless the defendant proves that he did not know that it was an intoxicating substance when he consumed, smoked, sniffed, injected, or otherwise ingested the substance causing the condition.

History: En. 94-2-109 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 53, Ch. 329, L. 1974; R.C.M. 1947, 94-2-109; amd. Sec. 1, Ch. 251, L. 1987.

Cross-References

Definition of "intoxicating substance", 45-2-101.
Robbery, 45-5-401.
Mental competency of accused, Title 46, ch. 14.

45-2-204 through 45-2-210 reserved.

45-2-211. Consent as a defense. (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) it is given by a person who by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to.

History: En. 94-2-111 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 13, Ch. 359, L. 1977; R.C.M. 1947, 94-2-111.

Cross-References

Sexual crimes, Title 45, ch. 5, part 5.

45-2-212. Compulsion. A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or serious bodily harm if he reasonably believes that death or serious bodily harm will be inflicted upon him if he does not perform such conduct.

History: En. 94-3-110 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-110.

45-2-213. Entrapment. A person is not guilty of an offense if his conduct is incited or induced by a public servant or his agent for the purpose of obtaining evidence for the prosecution of such person. However, this section is inapplicable if a public servant or his agent merely affords to such person the opportunity or facility for committing an offense in furtherance of criminal purpose which such person has originated.

History: En. 94-3-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-111.

Part 3

Liability for Acts Committed By or For Another

45-2-301. Accountability for conduct of another. A person is responsible for conduct which is an element of an offense if the conduct is either that of the person himself or that of another and he is legally accountable for such conduct as provided in 45-2-302, or both.

History: En. 94-2-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-106.

Cross-References

Definition of "conduct", 45-2-101.

When accountability exists, 45-2-302.

Testimony of person legally accountable, 46-16-213.

45-2-302. When accountability exists. A person is legally accountable for the conduct of another when:

(1) having a mental state described by the statute defining the offense, he causes another to perform the conduct, regardless of the legal capacity or mental state of the other person;

(2) the statute defining the offense makes him so accountable; or

(3) either before or during the commission of an offense with the purpose to promote or facilitate such commission, he solicits, aids, abets, agrees, or attempts to aid such other person in the planning or commission of the offense. However, a person is not so accountable if:

(a) he is a victim of the offense committed, unless the statute defining the offense provides otherwise; or

(b) before the commission of the offense, he terminates his effort to promote or facilitate such commission and does one of the following:

(i) wholly deprives his prior efforts of effectiveness in such commission;

(ii) gives timely warning to the proper law enforcement authorities; or

(iii) otherwise makes proper effort to prevent the commission of the offense.

History: En. 94-2-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-107.

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of another, 45-2-301.

Inchoate offenses, 45-4-101 through 45-4-103.

45-2-303. Separate conviction of person accountable. A person who is legally accountable for the conduct of another which is an element of an offense may be convicted upon proof that the offense was committed and that he was so accountable although the other person claimed to have committed the offense has not been prosecuted or convicted, has been convicted of a different offense, is not amenable to justice, or has been acquitted.

History: En. 94-2-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-108.

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of another, 45-2-301.

When accountability exists, 45-2-302.

45-2-304 through 45-2-310 reserved.

45-2-311. Criminal responsibility of corporations. (1) A corporation may be prosecuted for the commission of an offense if, but only if:

(a) the offense is a misdemeanor and is defined by 45-5-204, 45-6-315, 45-6-317, 45-6-318, 45-6-326, 45-6-327, 45-8-113, 45-8-114, 45-8-212, 45-8-214, 82-1-201, or 82-10-104 or by another statute which clearly indicates a legislative purpose to impose liability on a corporation and an agent of the corporation performs the conduct which is an element of the offense while acting within the scope of his office or employment and in behalf of the corporation, except that any limitation in the defining statute concerning the corporation's accountability for certain agents or under certain circumstances is applicable; or

(b) the commission of the offense is authorized, requested, commanded, or performed by the board of directors or by a high managerial agent who is acting within the scope of his employment in behalf of the corporation.

(2) A corporation's proof that the high managerial agent having supervisory responsibility over the conduct which is the subject matter of the offense exercised due diligence to prevent the commission of the offense is a defense to a prosecution for any offense to which subsection (1)(a) refers, other than an offense for which absolute liability is imposed. This subsection is inapplicable if the legislative purpose of the statute defining the offense is inconsistent with the provisions of this subsection.

(3) For the purposes of this section:

(a) "agent" means any director, officer, servant, employee, or other person who is authorized to act in behalf of the corporation;

(b) "high managerial agent" means an officer of the corporation or any other agent who has a position of comparable authority for the formulation of corporate policy or the supervision of subordinate employees in a managerial capacity.

History: En. 94-2-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-112; amd. Sec. 2, Ch. 582, L. 1983; amd. Sec. 2, Ch. 365, L. 1985.

Cross-References

Definition of "conduct", 45-2-101.

Accountability for conduct of corporation, 45-2-312.

Summons to a corporation, 46-6-212(2).

45-2-312. Accountability for conduct of corporation. (1) A person is legally accountable for conduct which is an element of an offense and which, in the name or in behalf of a corporation, he performs or causes to be performed to the same extent as if the conduct were performed in his own name or behalf.

(2) An individual who has been convicted of an offense by reason of his legal accountability for the conduct of a corporation is subject to the punishment authorized by law for an individual upon conviction of such offense although only a lesser or different punishment is authorized for the corporation.

History: En. 94-2-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-2-113.

Cross-References

Definition of "conduct", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 3

JUSTIFIABLE USE OF FORCE

Part 1 — When Force Justified

45-3-101. Definitions.
45-3-102. Use of force in defense of person.
45-3-103. Use of force in defense of occupied structure.
45-3-104. Use of force in defense of other property.
45-3-105. Use of force by aggressor.
45-3-106. Use of force to prevent escape.

45-3-107. Use of force by parent, guardian, or teacher.
45-3-108. Use of force in resisting arrest.
45-3-109. Execution of death sentence.
45-3-110 through 45-3-114 reserved.
45-3-115. Affirmative defense.

Part 1

When Force Justified

Part Cross-References
Right to use force, 49-1-103.

45-3-101. Definitions. (1) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(2) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

History: En. 94-3-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-101.

Cross-References
Definition of "forcible felony", 45-2-101.
Justifiable use of force, Title 45, ch. 3.

45-3-102. Use of force in defense of person. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or serious bodily harm to himself or another or to prevent the commission of a forcible felony.

History: En. 94-3-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-102.

Cross-References
Definitions of "forcible felony" and of "force likely to cause death or serious bodily harm", 45-3-101.

45-3-103. Use of force in defense of occupied structure. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's unlawful entry into or attack upon an occupied structure. However, he is justified in the use of force likely to cause death or serious bodily harm only if:

(1) the entry is made or attempted in violent, riotous, or tumultuous manner and he reasonably believes that such force is necessary to prevent an

assault upon or offer of personal violence to him or another then in the occupied structure; or

(2) he reasonably believes that such force is necessary to prevent the commission of a forcible felony in the occupied structure.

History: En. 94-3-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-103.

Cross-References

Definition of "conduct", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "enter or remain unlawfully", 45-6-201.

Criminal trespass to property, 45-6-203.

45-3-104. Use of force in defense of other property. A person is justified in the use of force or threat to use force against another when and to the extent that he reasonably believes that such conduct is necessary to prevent or terminate such other's trespass on or other tortious or criminal interference with either real property (other than an occupied structure) or personal property lawfully in his possession or in the possession of another who is a member of his immediate family or household or of a person whose property he has a legal duty to protect. However, he is justified in the use of force likely to cause death or serious bodily harm only if he reasonably believes that such force is necessary to prevent the commission of a forcible felony.

History: En. 94-3-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-104.

Cross-References

Definition of "forcible felony", 45-2-101, 45-3-101.

Use of force in defense of person, 45-3-102.

Use of force in defense of occupied structure, 45-3-103.

Definition of "enter or remain unlawfully", 45-6-201.

Criminal trespass to property, 45-6-203.

Arrest by a private person, 46-6-502.

45-3-105. Use of force by aggressor. The justification described in 45-3-102 through 45-3-104 is not available to a person who:

(1) is attempting to commit, committing, or escaping after the commission of a forcible felony; or

(2) purposely or knowingly provokes the use of force against himself, unless:

(a) such force is so great that he reasonably believes that he is in imminent danger of death or serious bodily harm and that he has exhausted every reasonable means to escape such danger other than the use of force which is likely to cause death or serious bodily harm to the assailant; or

(b) in good faith, he withdraws from physical contact with the assailant and indicates clearly to the assailant that he desires to withdraw and terminate the use of force but the assailant continues or resumes the use of force.

History: En. 94-3-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-105.

Cross-References

Definition of "forcible felony", 45-2-101, 45-3-101.

Definition of "force likely to cause death or serious bodily harm", 45-3-101.

45-3-106. Use of force to prevent escape. (1) A peace officer or other person who has an arrested person in his custody is justified in the use of such force to prevent the escape of the arrested person from custody as he would be justified in using if he were arresting such person.

(2) A guard or other peace officer is justified in the use of force, including force likely to cause death or serious bodily harm, which he reasonably believes to be necessary to prevent the escape from a correctional institution of a person whom the officer reasonably believes to be lawfully detained in such institution under sentence for an offense or awaiting trial or commitment for an offense.

History: En. 94-3-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-106.

Cross-References

Definition of "correctional institution", 45-2-101.

Resisting arrest, 45-7-301.

Escape, 45-7-306.

Stop and frisk, 46-5-401, 46-5-402.

Method of arrest, 46-6-104.

45-3-107. Use of force by parent, guardian, or teacher. A parent or an authorized agent of any parent or a guardian, master, or teacher is justified in the use of such force as is reasonable and necessary to restrain or correct his child, ward, apprentice, or pupil.

History: En. 94-3-107 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-107.

Cross-References

Homicide, 45-5-102 through 45-5-105.

Assault, 45-5-201 through 45-5-204.

45-3-108. Use of force in resisting arrest. A person is not authorized to use force to resist an arrest which he knows is being made either by a peace officer or by a private person summoned and directed by a peace officer to make the arrest, even if he believes that the arrest is unlawful and the arrest in fact is unlawful.

History: En. 94-3-108 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-108.

Cross-References

Use of force in defense of person, 45-3-102.

Resisting arrest, 45-7-301.

Method of arrest, 46-6-104.

Manner of arrest without a warrant, 46-6-312.

45-3-109. Execution of death sentence. A person who puts a person to death pursuant to a sentence of a court of competent jurisdiction is justified if he acts in accordance with the sentence pronounced and the law prescribing the procedure for execution of a death sentence.

History: En. 94-3-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-109; amd. Sec. 3, Ch. 411, L. 1983.

Cross-References

Death penalty, 46-18-301 through 46-18-310.

Execution of death, 46-19-103.

45-3-110 through 45-3-114 reserved.

45-3-115. Affirmative defense. A defense of justifiable use of force based on the provisions of this part is an affirmative defense.

History: En. 94-3-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-3-112.

Cross-References

Defendant presumed innocent — reasonable doubt, 46-16-204.

CHAPTER 4

INCHOATE OFFENSES

Part 1 — Enumeration of Offenses and Extent of Liability

45-4-101. Solicitation.
45-4-102. Conspiracy.
45-4-103. Attempt.

Part 1

Enumeration of Offenses and Extent of Liability

45-4-101. Solicitation. (1) A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

(2) A person convicted of solicitation shall be punished not to exceed the maximum provided for the offense solicited.

History: En. 94-4-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-101.

Cross-References

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

45-4-102. Conspiracy. (1) A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such agreement has been committed by him or by a coconspirator.

(2) It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:

(a) has not been prosecuted or convicted;
(b) has been convicted of a different offense;
(c) is not amenable to justice;
(d) has been acquitted; or
(e) lacked the capacity to commit the offense.

(3) A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

History: En. 94-4-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-102.

Cross-References

Admissibility of statements of coconspirator, Rule 801(d)(2)(E), M.R.Ev. (see Title 26, ch. 10).

Definition of "acts", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

Liability for acts committed by or for another, 45-2-301 through 45-2-312.

45-4-103. Attempt. (1) A person commits the offense of attempt when, with the purpose to commit a specific offense, he does any act toward the commission of such offense.

(2) It shall not be a defense to a charge of attempt that because of a misapprehension of the circumstances it would have been impossible for the accused to commit the offense attempted.

(3) A person convicted of the offense of attempt shall be punished not to exceed the maximum provided for the offense attempted.

(4) A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.

(5) Proof of the completed offense does not bar conviction for the attempt.

History: En. 94-4-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-4-103.

Cross-References

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

CHAPTER 5

OFFENSES AGAINST THE PERSON

Part 1 — Homicide

45-5-101. Repealed.
45-5-102. Deliberate homicide.
45-5-103. Mitigated deliberate homicide.
45-5-104. Negligent homicide.
45-5-105. Aiding or soliciting suicide.
45-5-106 through 45-5-110 reserved.
45-5-111. Extrajudicial confession — evidence of death.
45-5-112. Inference of mental state.

Part 2 — Assault

45-5-201. Assault.
45-5-202. Aggravated assault — felony assault.
45-5-203. Intimidation.
45-5-204. Mistreating prisoners.
45-5-205. Negligent vehicular assault — penalty.
45-5-206. Domestic abuse.
45-5-207. Criminal endangerment — penalty.
45-5-208. Negligent endangerment — penalty.
45-5-209 through 45-5-220 reserved.
45-5-221. Malicious intimidation or harassment relating to civil or human rights — penalty.
45-5-222. Sentence enhancement — offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities.

Part 3 — Kidnapping

45-5-301. Unlawful restraint.
45-5-302. Kidnapping.

45-5-303. Aggravated kidnapping.
45-5-304. Custodial interference.

Part 4 — Robbery

45-5-401. Robbery.

Part 5 — Sexual Crimes

45-5-501. Definition.
45-5-502. Sexual assault.
45-5-503. Sexual intercourse without consent.
45-5-504. Indecent exposure.
45-5-505. Deviate sexual conduct.
45-5-506. Renumbered 45-5-511 by Code Commissioner, 1983.
45-5-507. Incest.
45-5-508 through 45-5-510 reserved.
45-5-511. Provisions generally applicable to sexual crimes.

Part 6 — Offenses Against the Family

45-5-601. Prostitution.
45-5-602. Promoting prostitution.
45-5-603. Aggravated promotion of prostitution.
45-5-604. Evidence in cases of promotion.
45-5-605 through 45-5-610 reserved.
45-5-611. Bigamy.
45-5-612. Marrying a bigamist.
45-5-613. Renumbered 45-5-507 by Code Commissioner, 1983.
45-5-614 through 45-5-620 reserved.
45-5-621. Nonsupport.
45-5-622. Endangering the welfare of children.
45-5-623. Unlawful transactions with children.
45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order.
45-5-625. Sexual abuse of children.
45-5-626. Violation of protective order — misdemeanor.
45-5-627 through 45-5-630 reserved.
45-5-631. Visitation interference.
45-5-632. Aggravated visitation interference.
45-5-633. Defenses to visitation interference and aggravated visitation interference.

Part 1

Homicide

Part Cross-References

Family member of victim — reimbursement for mental health treatment, 53-9-128.

45-5-101. Repealed. Sec. 11, Ch. 610, L. 1987.

History: En. 94-5-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-101.

45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) he purposely or knowingly causes the death of another human being; or

(b) he attempts to commit, commits, or is legally accountable for the attempt or commission of robbery, sexual intercourse without consent, arson, burglary, kidnapping, aggravated kidnapping, felonious escape, felony assault, aggravated assault, or any other forcible felony and in the course of the forcible felony or flight thereafter, he or any person legally accountable for the crime causes the death of another human being.

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 46-18-301 through 46-18-310, by life imprisonment, or by imprisonment in the state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-222.

History: En. 94-5-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 11, Ch. 338, L. 1977; amd. Sec. 4, Ch. 584, L. 1977; R.C.M. 1947, 94-5-102; amd. Sec. 1, Ch. 322, L. 1979; amd. Sec. 1, Ch. 322, L. 1987; amd. Sec. 4, Ch. 610, L. 1987.

Cross-References

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Burden of the state in homicide trial, 45-5-111, 45-5-112.

Kidnapping, 45-5-301 through 45-5-304.

Robbery, 45-5-401.

Sexual intercourse without consent, 45-5-503.

Arson, 45-6-103.

Burglary, 45-6-204.

Escape, 45-7-306.

Limitation on deferred imposition of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

Killing of peace officer — aggravating circumstances, 46-18-303.

Protection of premature infants born alive, 50-20-108.

45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when he purposely or knowingly causes the death of another human being but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) It is an affirmative defense that the defendant acted under the influence of extreme mental or emotional stress for which there was reasonable explanation or excuse, the reasonableness of which shall be determined from the viewpoint of a reasonable person in the actor's situation. This defense constitutes a mitigating circumstance reducing deliberate homicide to mitigated deliberate homicide and must be proved by the defendant by a preponderance of the evidence.

(3) Mitigated deliberate homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(4) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

History: En. 94-5-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 5, Ch. 584, L. 1977; R.C.M. 1947, 94-5-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 610, L. 1987.

Cross-References

Deliberate homicide, 45-5-102.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

Protection of premature infants born alive, 50-20-108.

Ground for suspension or revocation of driver's license, 61-5-405.

45-5-104. Negligent homicide. (1) A person commits the offense of negligent homicide if he negligently causes the death of another human being.

(2) Negligent homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

(3) A person convicted of negligent homicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-104; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 6, Ch. 610, L. 1987.

Cross-References

Classification of offenses, 45-1-201.

Definition of "negligently", 45-2-101.

Protection of premature infants born alive, 50-20-108.

Ground for suspension or revocation of driver's license, 61-5-405.

45-5-105. Aiding or soliciting suicide. (1) A person who purposely aids or solicits another to commit suicide, but such suicide does not occur, commits the offense of aiding or soliciting suicide.

(2) A person convicted of the offense of aiding or soliciting a suicide shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-106; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

When accountability exists, 45-2-302.

45-5-106 through 45-5-110 reserved.

45-5-111. Extrajudicial confession — evidence of death. In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death and the fact that the death was caused by a criminal agency.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004; MCA 1981, 46-16-203(1); redes. 45-5-111 by Code Commissioner, 1983.

45-5-112. Inference of mental state. In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances of mitigation, excuse, or justification appear.

History: En. 95-3004 by Sec. 12, Ch. 513, L. 1973; amd. Sec. 49, Ch. 184, L. 1977; R.C.M. 1947, 95-3004; MCA 1981, 46-16-203(2); redes. 45-5-112 by Code Commissioner, 1983.

Cross-References

Inference of mental state generally, 45-2-103.

Part 2

Assault

45-5-201. Assault. (1) A person commits the offense of assault if he:

(a) purposely or knowingly causes bodily injury to another;

(b) negligently causes bodily injury to another with a weapon;

(c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another.

(2) Except as provided in subsection (3), a person convicted of assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

History: En. 94-5-201 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-201; amd. Sec. 1, Ch. 261, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 188, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(d) deleted former second sentence that read: "The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded". Amendment effective March 26, 1991.

Cross-References

Definition of "bodily injury", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "negligently", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "weapon", 45-2-101.

45-5-202. Aggravated assault — felony assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes serious bodily injury to another.

(2) A person commits the offense of felony assault if he purposely or knowingly causes:

(a) bodily injury to another with a weapon;

(b) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(c) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(3) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222. A person convicted of felony assault shall be imprisoned in the state prison for a term not to exceed 10 years or be fined not more than $50,000, or both.

History: En. 94-5-202 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 6, Ch. 584, L. 1977; R.C.M. 1947, 94-5-202; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 289, L. 1981; amd. Sec. 1, Ch. 163, L. 1985.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "serious bodily injury", 45-2-101.

Definition of "weapon", 45-2-101.

Time of making arrest — domestic violence or aggravated assault against family or household member, 46-6-105.

Circumstances of making arrest — domestic abuse or aggravated assault against family or household member, 46-6-210.

Written report when no arrest made in domestic violence situation, 46-6-601.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-602.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

45-5-203. Intimidation. (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another, under circumstances which reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person;

(b) subject any person to physical confinement or restraint; or

(c) commit any felony.

(2) A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

(3) A person convicted of the offense of intimidation shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-203; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 268, L. 1985.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "purposely", 45-2-101.

45-5-204. Mistreating prisoners. (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

(a) assaults or otherwise injures a prisoner;

(b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from him or for any other purpose; or

(c) violates any civil right of a prisoner.

(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-8-113 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-113; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "threat", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-5-205. Negligent vehicular assault — penalty. (1) If a person operates a motor vehicle in a negligent manner and he is driving while under the influence of alcohol, a dangerous drug, any other drug, or any combination of the three, as provided for in 61-8-401(1), and his conduct is the cause of bodily injury to another, he commits the offense of negligent vehicular assault.

(2) A person convicted of the offense of negligent vehicular assault shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. Sec. 1, Ch. 93, L. 1985; amd. Sec. 1, Ch. 196, L. 1987; amd. Sec. 14, Ch. 789, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted reference to dangerous or other drugs or combination of drugs and alcohol for "or drugs"; and made minor changes in style.

45-5-206. Domestic abuse. (1) A person commits the offense of domestic abuse if he:

(a) purposely or knowingly causes bodily injury to a family member or household member; or

(b) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or household member. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or household member, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of 46-6-311 and this section, "family member or household member" means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed $500 or be imprisoned in the county jail not to exceed 6 months, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

(4) (a) A person convicted of domestic abuse for the first or second time shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:

(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4)(a) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines there is no available treatment program directed to the violent conduct of the convicted person.

(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court.

History: En. Sec. 1, Ch. 700, L. 1985; amd. Sec. 1, Ch. 480, L. 1989; amd. Sec. 257, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (2) substituted "46-6-311" for "46-6-401"; and made minor changes in style.

Cross-References

Time of making arrest — domestic violence or aggravated assault against family or household member, 46-6-105.

Circumstances of making arrest — domestic abuse or aggravated assault against family or household member, 46-6-210.

Written report when no arrest made in domestic violence situation, 46-6-601.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-602.

45-5-207. Criminal endangerment — penalty. (1) A person who knowingly engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of criminal endangerment. This conduct includes but is not limited to knowingly placing in a tree, log, or any other wood any steel, iron, ceramic, or other substance for the purpose of damaging a saw or other wood harvesting, processing, or manufacturing equipment.

(2) A person convicted of the offense of criminal endangerment shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 2, Ch. 196, L. 1987; amd. Sec. 1, Ch. 299, L. 1989.

45-5-208. Negligent endangerment — penalty. (1) A person who negligently engages in conduct that creates a substantial risk of death or serious bodily injury to another commits the offense of negligent endangerment.

(2) A person convicted of the offense of negligent endangerment shall be fined an amount not to exceed $1,000 or imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. Sec. 3, Ch. 196, L. 1987.

45-5-209 through 45-5-220 reserved.

45-5-221. Malicious intimidation or harassment relating to civil or human rights — penalty. (1) A person commits the offense of malicious intimidation or harassment when, because of another person's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities, he purposely or knowingly, with the intent to terrify, intimidate, threaten, harass, annoy, or offend:

(a) causes bodily injury to another;

(b) causes reasonable apprehension of bodily injury in another; or

(c) damages, destroys, or defaces any property of another or any public property.

(2) For purposes of this section, "deface" includes but is not limited to cross burning or the placing of any word or symbol commonly associated with racial, religious, or ethnic identity or activities on the property of another person without his or her permission.

(3) A person convicted of the offense of malicious intimidation or harassment shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $5,000, or both.

History: En. Secs. 1, 2, Ch. 570, L. 1989.

45-5-222. Sentence enhancement — offenses committed because of victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities. (1) A person who has been found guilty of any offense, except malicious intimidation or harassment, that was committed because of the victim's race, creed, religion, color, national origin, or involvement in civil rights or human rights activities or that involved damage, destruction, or attempted destruction of a building regularly used for religious worship, in addition to the punishment provided for commission of the offense, may be sentenced to a term of imprisonment of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by subsection (1) shall run consecutively to the sentence, except as provided in 46-18-222.

History: En. Sec. 3, Ch. 570, L. 1989.

Part 3

Kidnapping

45-5-301. Unlawful restraint. (1) A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains another so as to interfere substantially with his liberty.

(2) A person convicted of the offense of unlawful restraint shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-301.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

45-5-302. Kidnapping. (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000, except as provided in 46-18-222.

History: En. 94-5-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 7, Ch. 584, L. 1977; R.C.M. 1947, 94-5-302; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Limitation upon deferral or suspension of sentence, 46-18-201.

45-5-303. Aggravated kidnapping. (1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) Except as provided in 46-18-222, a person convicted of the offense of aggravated kidnapping shall be punished by death or life imprisonment as provided in 46-18-301 through 46-18-310 or be imprisoned in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than $50,000, unless he has voluntarily released the victim alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for a term of not less than 2 years or more than 10 years and may be fined not more than $50,000.

History: En. 94-5-303 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 12, Ch. 338, L. 1977; amd. Sec. 8, Ch. 584, L. 1977; R.C.M. 1947, 94-5-303; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Unlawful restraint, 45-5-301.

Kidnapping, 45-5-302.

Limitation on deferral or suspension of sentence, 46-18-201.

Sentences for certain offenses committed in state prison, 46-18-220.

45-5-304. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so:

(a) he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution;

(b) prior to the entry of a court order determining custodial rights, he takes, entices, or withholds any child from the other parent where the action manifests a purpose to substantially deprive that parent of parental rights; or

(c) he is one of two persons who has joint custody of a child under a court order and he takes, entices, or withholds the child from the other where the action manifests a purpose to substantially deprive the other parent of parental rights.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment. A person who has left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arrest.

History: En. 94-5-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-305; amd. Sec. 1, Ch. 274, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 518, L. 1987.

Cross-References

Child custody determination and modification, 40-4-211 through 40-4-225.

Definition of "knowingly", 45-2-101.

Kidnapping, 45-5-302.

Aggravated kidnapping, 45-5-303.

Part 4

Robbery

45-5-401. Robbery. (1) A person commits the offense of robbery if in the course of committing a theft he:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for a term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission.

History: En. 94-5-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 9, Ch. 584, L. 1977; R.C.M. 1947, 94-5-401; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "threat", 45-2-101.

Theft, 45-6-301.

Limitation on deferral or suspension of sentence, 46-18-201.

Part 5

Sexual Crimes

Part Cross-References

Presentence investigation, 46-18-111.

Family member of minor victim — reimbursement for mental health treatment, 53-9-128.

45-5-501. Definition. (1) As used in 45-5-503, the term "without consent" means:

(a) the victim is compelled to submit by force against himself or another; or

(b) the victim is incapable of consent because he is:

(i) mentally defective or incapacitated;

(ii) physically helpless; or

(iii) less than 16 years old.

(2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

History: En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, 94-5-501; amd. Sec. 3, Ch. 175, L. 1991; amd. Sec. 1, Ch. 218, L. 1991; amd. Secs. 1, 8, Ch. 687, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 175 in introductory clause, after "45-5-503", deleted "and 45-5-505".

Chapter 218 in (1)(a), after "force", substituted "against himself or another" for "or by threat of imminent death, bodily injury, or kidnapping to be inflicted on anyone"; inserted (2) defining force; and made minor changes in style.

Chapter 687 in (1), near beginning after "45-5-503", deleted reference to 45-5-505; inserted (2) defining force; and made minor changes in style. Amendment effective April 27, 1991.

Coordination: Section 8, Ch. 687, L. 1991, provided: "The amendment in section 1, Chapter 218, Laws of 1991, inserting subsection (2)(b) of 45-5-501 is void."

Cross-References

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "physically helpless", 45-2-101.

Definition of "sexual contact", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Consent as a defense, 45-2-211.

Sexual intercourse without consent, 45-5-503.

Deviate sexual conduct, 45-5-505.

Sexual abuse of children, 45-5-625.

45-5-502. Sexual assault. (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, he shall be imprisoned in the state prison for any term not less than 2 years or more than 20 years and may be fined not more than $50,000.

(4) An act "in the course of committing sexual assault" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if the victim is less than 14 years old and the offender is 3 or more years older than the victim.

History: En. 94-5-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-502; amd. Sec. 1, Ch. 687, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 172, L. 1985; amd. Sec. 1, Ch. 564, L. 1991; amd. Sec. 2, Ch. 687, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 564 near end of (3), before "20 years", substituted "less than 2 years or more than" for "to exceed".

Chapter 687 in (1), after "another", substituted "person" for "not his spouse". Amendment effective April 27, 1991.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "sexual contact", 45-2-101.

Sexual abuse of children, 45-5-625.

45-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of his spouse as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

(b) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 172, L. 1985; amd. Sec. 1, Ch. 356, L. 1985; amd. Sec. 1, Ch. 644, L. 1985; amd. Sec. 1, Ch. 175, L. 1991; amd. Sec. 2, Ch. 218, L. 1991; amd. Sec. 3, Ch. 687, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 175 in (1) substituted "another person" for "a person of the opposite sex".

Chapter 218 at end of (1) changed subsection reference to 45-5-501.

Chapter 687 in (1), in first sentence, substituted "another person" for "a person of the opposite sex" and at end of second sentence changed subsection reference to 45-5-501. Amendment effective April 27, 1991.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "mentally defective", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual abuse of children, 45-5-625.

Limitation on deferral or suspension of sentence, 46-18-201.

45-5-504. Indecent exposure. (1) A person who, for the purpose of arousing or gratifying sexual desire of himself or of any person, exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm commits the offense of indecent exposure.

(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term of not more than 6 months, or both.

(b) On a second conviction, he shall be fined an amount not to exceed $1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both.

(c) On a third or subsequent conviction, he shall be fined an amount not to exceed $10,000 or be imprisoned in the state prison for a term of not more than 5 years, or both.

History: En. 94-5-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-504; amd. Sec. 1, Ch. 176, L. 1991; amd. Sec. 4, Ch. 687, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 176 inserted (2)(b) and (2)(c) relating to second and third or subsequent convictions; and made minor changes in style.

Chapter 687 in (1), near middle after "any person", deleted "other than his spouse". Amendment effective April 27, 1991.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Obscenity, 45-8-201.

45-5-505. Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.

(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(3) The fact that a person seeks testing or receives treatment for the HIV-related virus or another sexually transmitted disease may not be used as a basis for a prosecution under this section and is not admissible in evidence in a prosecution under this section.

History: En. 94-5-505 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-505; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 175, L. 1991; amd. Sec. 7, Ch. 687, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 175 deleted former (3) providing that a person convicted of deviate sexual conduct be imprisoned in the state prison for a term not exceeding 20 years or be fined an amount not exceeding $50,000, or both.

Chapter 687 inserted (3) precluding the fact that a person seeks or receives treatment for HIV-related virus or other sexually transmitted disease from use as the basis of and admissibility in a prosecution. Amendment effective April 27, 1991.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "deviate sexual relations", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual contact", 45-2-101.

Definition of "without consent", 45-5-501, 45-5-511.

Sexual abuse of children, 45-5-625.

45-5-506. Renumbered 45-5-511 by Code Commissioner, 1983.

45-5-507. Incest. (1) A person commits the offense of incest if he knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact as defined in 45-2-101 with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to herein include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.

(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.

(3) A person convicted of incest shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, he shall be imprisoned in the state prison for any term not to exceed 20 years and may be fined not more than $50,000.

(5) In addition to any sentence imposed under subsection (3) or (4), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

History: En. 94-5-606 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-606; amd. Sec. 7, Ch. 198, L. 1981; MCA 1981, 45-5-613; redes. 45-5-507 by Code Commissioner, 1983; amd. Sec. 1, Ch. 438, L. 1983; amd. Sec. 2, Ch. 644, L. 1985; amd. Sec. 1, Ch. 174, L. 1989; amd. Sec. 5, Ch. 687, L. 1991.

Compiler's Comments

1991 Amendment: In (3) increased maximum term of imprisonment from 10 years to 20 years. Amendment effective April 27, 1991.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "cohabit", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-508 through 45-5-510 reserved.

45-5-511. Provisions generally applicable to sexual crimes. (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

History: En. 94-5-506 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, 94-5-506; amd. Sec. 3, Ch. 407, L. 1979; MCA 1981, 45-5-506; redes. 45-5-511 by Code Commissioner, 1983; amd. Sec. 3, Ch. 172, L. 1985; amd. Sec. 1, Ch. 425, L. 1987; amd. Sec. 6, Ch. 687, L. 1991.

Compiler's Comments

1991 Amendment: Deleted former (2) that read: "(2) Whenever the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as husband and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart whether under a decree of judicial separation or otherwise. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform"; deleted former (3) that read: "(3) In a prosecution under the preceding sections on sexual crimes (45-5-502 through 45-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken"; in (3), in two places, changed subsection reference; and made minor changes in style. Amendment effective April 27, 1991.

Cross-References

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "mentally incapacitated", 45-2-101.

Definition of "without consent", 45-5-501.

Sexual assault, 45-5-502.

Sexual intercourse without consent, 45-5-503.

Indecent exposure, 45-5-504.

Sexual abuse of children, 45-5-625.

Part 6

Offenses Against the Family

45-5-601. Prostitution. (1) A person commits the offense of prostitution if such person engages in or agrees or offers to engage in sexual intercourse with another person for compensation, whether such compensation is received or to be received or paid or to be paid.

(2) A person convicted of prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-602 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 80, L. 1975; R.C.M. 1947, 94-5-602.

Cross-References

Definition of "public place", 45-2-101.

Definition of "sexual intercourse", 45-2-101.

45-5-602. Promoting prostitution. (1) A person commits the offense of promoting prostitution if he purposely or knowingly commits any of the following acts:

(a) owns, controls, manages, supervises, resides in, or otherwise keeps, alone or in association with others, a house of prostitution or a prostitution business;

(b) procures an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;

(c) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(d) solicits a person to patronize a prostitute;

(e) procures a prostitute for a patron;

(f) transports a person into or within this state with the purpose to promote that person's engaging in prostitution or procures or pays for transportation with that purpose;

(g) leases or otherwise permits a place controlled by the offender, alone or in association with others, to be regularly used for prostitution or for the procurement of prostitution or fails to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or using other legally available means; or

(h) lives in whole or in part upon the earnings of a person engaging in prostitution, unless the person is the prostitute's minor child or other legal dependent incapable of self-support.

(2) A person convicted of promoting prostitution shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part).

Cross-References

Definition of "house of prostitution", 45-2-101.
Definition of "inmate", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "solicit", 45-2-101.
Prostitution, 45-5-601.
Evidence in cases of promotion, 45-5-604.

45-5-603. Aggravated promotion of prostitution. (1) A person commits the offense of aggravated promotion of prostitution if he purposely or knowingly commits any of the following acts:

(a) compels another to engage in or promote prostitution;

(b) promotes prostitution of a child under the age of 18 years, whether or not he is aware of the child's age;

(c) promotes the prostitution of one's spouse, child, ward, or any person for whose care, protection, or support he is responsible.

(2) A person convicted of aggravated promotion of prostitution shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(part); amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Prostitution, 45-5-601.
Promoting prostitution, 45-5-602.
Evidence in cases of promotion, 45-5-604.

45-5-604. Evidence in cases of promotion. (1) On the issue whether a place is a house of prostitution, the following, in addition to all other admissible evidence, shall be admissible:

(a) its general repute;

(b) the repute of the persons who reside in or frequent the place; or

(c) the frequency, timing, and duration of visits by nonresidents.

(2) Testimony of a person against his spouse shall be admissible under 45-5-602, 45-5-603, and this section.

History: En. 94-5-603 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 2, L. 1975; R.C.M. 1947, 94-5-603(4).

Cross-References

Definition of "house of prostitution", 45-2-101.

Prostitution, 45-5-601.

Promoting prostitution, 45-5-602.

Aggravated promotion of prostitution, 45-5-603.

45-5-605 through 45-5-610 reserved.

45-5-611. Bigamy. (1) A person commits the offense of bigamy if, while married, he knowingly contracts or purports to contract another marriage unless at the time of the subsequent marriage:

(a) the offender believes on reasonable grounds that the prior spouse is dead;

(b) the offender and the prior spouse have been living apart for 5 consecutive years throughout which the prior spouse was not known by the offender to be alive;

(c) a court has entered a judgment purporting to terminate or annul any prior disqualifying marriage and the offender does not know that judgment to be invalid; or

(d) the offender reasonably believes that he is legally eligible to remarry.

(2) A person convicted of bigamy shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-604 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-604.

Cross-References

Definition of "knowingly", 45-2-101.

45-5-612. Marrying a bigamist. (1) A person commits the offense of marrying a bigamist if he contracts or purports to contract a marriage with another knowing that the other is thereby committing bigamy.

(2) A person convicted of the offense of marrying a bigamist shall be fined not to exceed $500 or be imprisoned in the county jail for any period not to exceed 6 months, or both.

History: En. 94-5-605 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-605.

Cross-References

Definition of "knowingly", 45-2-101.

Bigamy, 45-5-611.

45-5-613. Renumbered 45-5-507 by Code Commissioner, 1983.

45-5-614 through 45-5-620 reserved.

45-5-621. Nonsupport. (1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support; or

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of aggravated nonsupport shall be fined not to exceed

$50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of nonsupport paid to or for the benefit of any person that the defendant has failed to support.

History: En. 94-5-608 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 19, Ch. 359, L. 1977; R.C.M. 1947, 94-5-608; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Mutual obligations of husband and wife, 40-2-101.

Duties of husband and wife as to support, 40-2-102.

Support of spouse, 40-2-103.

Liability of married person when abandoned by spouse, 40-2-104.

Child support, 40-4-204.

Enforcement of support, Title 40, ch. 5.

Reciprocal duties of parents and children in maintaining each other, 40-6-214.

Definition of "knowingly", 45-2-101.

45-5-622. Endangering the welfare of children. (1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not he is supervising the welfare of the child, commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of an intoxicating substance by the child; or

(ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon his place of residence without the consent of his parents or guardian; or

(ii) engage in sexual conduct.

(3) A person convicted of endangering the welfare of children shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined not to exceed $1,000 or imprisoned in the county jail for any term not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

History: En. 94-5-607 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 85, L. 1975; amd. Sec. 1, Ch. 218, L. 1977; amd. Sec. 18, Ch. 359, L. 1977; R.C.M. 1947, 94-5-607; amd. Sec. 1, Ch. 405, L. 1987; amd. Sec. 3, Ch. 448, L. 1989.

Cross-References

Liability of one furnishing alcoholic beverage for injuries arising from an event involving the consumer, 27-1-710.

Definition of "knowingly", 45-2-101.

45-5-623. Unlawful transactions with children. (1) Except as provided for in 16-6-305, a person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;

(c) sells or gives an alcoholic beverage to a person under 21 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-5-609 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-609; amd. Sec. 2, Ref. 74, app. Nov. 7, 1978; amd. Sec. 4, Ch. 217, L. 1987; amd. Sec. 4, Ch. 448, L. 1989.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Liability of one furnishing alcoholic beverage for injuries arising from an event involving the consumer, 27-1-710.

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

45-5-624. Unlawful possession of an intoxicating substance — interference with sentence or court order. (1) (a) A person under the age of 19 years commits the offense of possession of an intoxicating substance if he knowingly consumes or has in his possession an intoxicating substance. The person need not be consuming or in possession of the intoxicating substance at the time of his arrest to violate this subsection.

(b) A person under the age of 21 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except as provided in 16-6-305 and except that he does not commit the offense if he consumes or gains possession of the beverage because it was lawfully supplied to him under 16-6-305 or when in the course of his employment it is necessary to possess alcoholic beverages.

(2) A person convicted of the offense of possession of an intoxicating substance shall if the person:

(a) is less than 18 years of age, be fined not to exceed $50 and:

(i) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(ii) be ordered to perform community service;

(iii) have his driver's license suspended if convicted of a second or subsequent offense under this section; or

(iv) be sentenced to any combination of the penalties provided for in subsections (2)(a)(i) through (2)(a)(iii); or

(b) is 18 years of age or older, be fined an amount not to exceed $50 for a first offense, $100 for a second offense, and $200 for a third offense or be fined an amount not to exceed $300 or be imprisoned in the county jail for a term not to exceed 6 months, or both, for a fourth or subsequent offense and:

(i) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of his participation in a community-based substance abuse information course;

(ii) have his driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to perform community service; or

(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through (2)(b)(iii).

(3) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

(4) A person commits the offense of interference with a sentence or court order if he purposely or knowingly causes his child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined $100 or imprisoned in the county jail for 10 days, or both.

History: En. 94-5-610 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 87, L. 1974; amd. Sec. 1, Ch. 536, L. 1977; R.C.M. 1947, 94-5-610; amd. Sec. 3, Ref. 74, app. Nov. 7, 1978; amd. Sec. 1, Ch. 105, L. 1985; amd. Sec. 5, Ch. 217, L. 1987; amd. Sec. 65, Ch. 609, L. 1987; amd. Sec. 1, Ch. 412, L. 1989; amd. Sec. 5, Ch. 448, L. 1989; amd. Sec. 1, Ch. 477, L. 1989; amd. Sec. 1, Ch. 502, L. 1991.

Compiler's Comments

1991 Amendment: In (2)(a) inserted subsections (i) through (iv) relating to license confiscation, community service, and license suspension; in (2)(b), after "third offense", substituted "or" for "for a fourth or subsequent offense a person may" and at end inserted "for a fourth or subsequent offense"; inserted (2)(b)(iii) relating to community service; in (2)(b)(iv), at end, inserted references to subsections (2)(b)(i) through (2)(b)(iii); and made minor changes in style.

Contingent Termination Date: Section 9(2), Ch. 217, L. 1987, read: "If the United States congress repeals or removes or a final judgment invalidates the provisions of federal law that require states to raise the legal age for purchasing and possessing alcoholic beverages to 21 as a condition of full receipt of federal highway funds, the governor of Montana shall immediately certify the fact of the repeal, removal, or invalidation to the secretary of state of Montana. This act terminates on the date of such certification."

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

Unlawful purchase of alcoholic beverage, 16-3-301.

Penalty for violation of liquor code by underage person, 16-6-314.

Definition of "intoxicating substance", 45-2-101.

Definition of "knowingly", 45-2-101.

45-5-625. Sexual abuse of children. (1) A person commits the offense of sexual abuse of children if he knowingly:

(a) employs, uses, or permits the employment or use of a child in an exhibition of sexual contact, actual or simulated;

(b) photographs, films, videotapes, or records a child engaging in sexual contact, actual or simulated;

(c) persuades, entices, counsels, or procures a child to engage in sexual contact, actual or simulated, for use as designated in (1)(a), (1)(b), or (1)(d);

(d) processes, develops, prints, publishes, transports, distributes, sells, possesses with intent to sell, exhibits, or advertises material consisting of or including a photograph, photographic negative, undeveloped film, videotape, or recording representing a child engaging in sexual contact, actual or simulated; or

(e) finances any of the activities described in subsections (1)(a) through (1)(d) knowing that the activity is of the nature described in those subsections.

(2) A person convicted of the offense of sexual abuse of children shall be fined not to exceed $10,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

(3) For the purposes of this section, "child" means any person less than 16 years old.

History: En. Sec. 1, Ch. 505, L. 1979.

Cross-References

Childhood sexual abuse — statute of limitations for civil action, 27-2-216.

Victim less than 16 years old — extension of statute of limitations, 45-1-205.

Definition of "knowingly", 45-2-101.

Definition of "sexual contact", 45-2-101.

Sexual crimes, Title 45, ch. 5, part 5.

Family member of minor victim — reimbursement for mental health treatment, 53-9-128.

45-5-626. Violation of protective order — misdemeanor. (1) A person commits the offense of violation of a protective order if he, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121.

(2) A person convicted of violation of a protective order shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 9, Ch. 526, L. 1985.

45-5-627 through 45-5-630 reserved.

45-5-631. Visitation interference. (1) A person who has legal custody of a minor child commits the offense of visitation interference if he knowingly or purposely prevents, obstructs, or frustrates the visitation rights of a person entitled to visitation under an existing court order.

(2) A person convicted of the offense of visitation interference shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 5 days, or both.

History: **En. Sec. 1, Ch. 493, L. 1987.**

45-5-632. Aggravated visitation interference. (1) A person who commits the offense of visitation interference by changing the residence of the minor child over whom he has legal custody to another state without giving written notice as required in 40-4-217 or without written consent of the person entitled to visitation pursuant to an existing court order commits the offense of aggravated visitation interference.

(2) A person convicted of the offense of aggravated visitation interference shall be fined an amount not to exceed $1,000 or be imprisoned in the state prison for a term not to exceed 18 months, or both.

History: **En. Sec. 2, Ch. 493, L. 1987.**

45-5-633. Defenses to visitation interference and aggravated visitation interference. (1) A person does not commit the offense of visitation interference or aggravated visitation interference if he acts:

(a) with the consent of the person entitled to visitation;

(b) under an existing court order; or

(c) with reasonable cause.

(2) Return of the child prior to arrest is a defense only with respect to the first commission of visitation interference or aggravated visitation interference.

History: **En. Sec. 3, Ch. 493, L. 1987.**

CHAPTER 6

OFFENSES AGAINST PROPERTY

Part 1 — Criminal Mischief and Arson

45-6-101. Criminal mischief.
45-6-102. Negligent arson.
45-6-103. Arson.

Part 2 — Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully".
45-6-202. Criminal trespass to vehicles.
45-6-203. Criminal trespass to property.
45-6-204. Burglary.
45-6-205. Possession of burglary tools.

Part 3 — Theft and Related Offenses

45-6-301. Theft.
45-6-302. Theft of lost or mislaid property.
45-6-303. Offender's interest in the property.

45-6-304. Repealed.
45-6-305. Theft of labor or services or use of property.
45-6-306. Obtaining communication services with intent to defraud.
45-6-307. Aiding the avoidance of telecommunications charges.
45-6-308. Unauthorized use of motor vehicles.
45-6-309. Failure to return rented or leased personal property.
45-6-310. Definition — computer use.
45-6-311. Unlawful use of a computer.
45-6-312. Unauthorized acquisition or transfer of food stamps.
45-6-313 reserved.
45-6-314. Theft by disposal of stolen property.
45-6-315. Defrauding creditors.
45-6-316. Issuing a bad check.
45-6-317. Deceptive practices.
45-6-318. Deceptive business practices.
45-6-319. Chain distributor schemes.
45-6-320 through 45-6-324 reserved.
45-6-325. Forgery.
45-6-326. Obscuring the identity of a machine.
45-6-327. Illegal branding or altering or obscuring a brand.

Part 1

Criminal Mischief and Arson

45-6-101. Criminal mischief. (1) A person commits the offense of criminal mischief if he knowingly or purposely:

(a) injures, damages, or destroys any property of another or public property without consent;

(b) without consent tampers with property of another or public property so as to endanger or interfere with persons or property or its use;

(c) damages or destroys property with the purpose to defraud an insurer; or

(d) fails to close a gate previously unopened which he has opened, leading in or out of any enclosed premises. This does not apply to gates located in cities or towns.

(2) A person convicted of criminal mischief shall be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person's ability to pay the same. Upon good cause shown by the convicted person, the court may modify any previous order specifying the amount and manner of restitution. Full payment of the amount of restitution ordered shall be made prior to the release of state jurisdiction over the person convicted.

(3) A person convicted of the offense of criminal mischief shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender commits the offense of criminal

mischief and causes pecuniary loss in excess of $300, injures or kills a commonly domesticated hoofed animal, or causes a substantial interruption or impairment of public communication, transportation, supply of water, gas, or power, or other public services, he shall be fined an amount not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(4) Amounts involved in criminal mischiefs committed pursuant to a common scheme or the same transaction, whether against the public or the same person or several persons, may be aggregated in determining pecuniary loss.

History: En. 94-6-102 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 88, L. 1975; R.C.M. 1947, 94-6-102; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 3, Ch. 560, L. 1981; amd. Sec. 1, Ch. 581, L. 1983; amd. Sec. 1, Ch. 98, L. 1989.

Cross-References

Injury to election equipment, materials, and records, 13-35-206.

Injury to property associated with funeral or interment, 35-21-704.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "property of another", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "tamper", 45-2-101.

Definition of "value", 45-2-101.

Injury to water distribution system in irrigation district, 85-7-1924.

Duty of state conservation officers to enforce — where, 87-1-504.

Disturbance or theft of traps or trapped animals, 87-3-507.

45-6-102. Negligent arson. (1) A person commits the offense of negligent arson if he purposely or knowingly starts a fire or causes an explosion, whether on his own property or property of another, and thereby negligently:

(a) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion; or

(b) places property of another in danger of damage or destruction.

(2) A person convicted of the offense of negligent arson shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the offender places another person in danger of death or bodily injury, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-103; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 590, L. 1985.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "property of another", 45-2-101.

Definition of "purposely", 45-2-101.

Penalty for setting or leaving fire causing damage, 50-63-102.

Failure to extinguish campfire, 76-13-123.

45-6-103. Arson. (1) A person commits the offense of arson when, by means of fire or explosives, he knowingly or purposely:

(a) damages or destroys an occupied structure which is property of another without consent; or

(b) places another person in danger of death or bodily injury, including a firefighter responding to or at the scene of a fire or explosion.

(2) A person convicted of the offense of arson shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 261, L. 1975; R.C.M. 1947, 94-6-104; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 590, L. 1985.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "purposely", 45-2-101.

Causal relationship between conduct and result, 45-2-201.

Definition of "without consent", 45-5-501.

Release of arsonist — notification of Department of Justice, 53-1-104.

Part 2

Criminal Trespass and Burglary

45-6-201. Definition of "enter or remain unlawfully". (1) A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. Privilege to enter or remain upon land is extended either by the explicit permission of the landowner or other authorized person or by the failure of the landowner or other authorized person to post notice denying entry onto private land. The privilege may be revoked at any time by personal communication of notice by the landowner or other authorized person to the entering person.

(2) To provide for effective posting of private land through which the public has no right-of-way, the notice provided for in subsection (1) must satisfy the following requirements:

(a) notice must be placed on a post, structure, or natural object by marking it with written notice or with not less than 50 square inches of fluorescent orange paint, except that when metal fenceposts are used, the entire post must be painted; and

(b) the notice described in subsection (2)(a) must be placed at each outer gate and normal point of access to the property, including both sides of a water body crossing the property wherever the water body intersects an outer boundary line.

(3) To provide for effective posting of private land through which or along which the public has an unfenced right-of-way by means of a public road, a landowner shall:

(a) place a conspicuous sign no closer than 30 feet of the centerline of the roadway where it enters the private land, stating words substantially similar to "PRIVATE PROPERTY, NO TRESPASSING OFF ROAD NEXT ___ MILES"; or

(b) place notice, as described in subsection (2)(a), no closer than 30 feet of the centerline of the roadway at regular intervals of not less than one-fourth mile along the roadway where it borders unfenced private land, except that orange markings may not be placed on posts where the public roadway enters the private land.

(4) If property has been posted in substantial compliance with subsection (2) or (3), it is considered closed to public access unless explicit permission to enter is given by the landowner or his authorized agent.

(5) The department of fish, wildlife, and parks shall attempt to educate and inform all persons holding hunting, fishing, or trapping licenses or permits by including on any publication concerning the licenses or permits, in condensed form, the provisions of this section concerning entry on private land. The department shall use public media, as well as its own publications, in attempting to educate and inform other recreational users of the provisions of this section. In the interests of providing the public with clear information regarding the public nature of certain unfenced rural rights-of-way, the department may develop and distribute posting signs that satisfy the requirements of subsection (3).

(6) For purposes of this section, "land" means land as defined in 70-15-102.

(7) In no event may civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this section.

History: En. 94-6-201 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 21, Ch. 359, L. 1977; R.C.M. 1947, 94-6-201; amd. Sec. 1, Ch. 599, L. 1985; amd. Sec. 1, Ch. 268, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (2) substituted "To provide for effective posting of private land through which the public has no right-of-way" for "To be effective under this section"; inserted (3) describing requirements for effective posting of private land; in (4) inserted reference to subsection (3); in (5) inserted last sentence relating to Department posting signs; and made minor changes in style.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "occupied structure", 45-2-101.
Definition of "premises", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.

45-6-202. Criminal trespass to vehicles. (1) A person commits the offense of criminal trespass to vehicles when he purposely or knowingly and without authority enters any vehicle or any part thereof.

(2) A person convicted of the offense of criminal trespass to vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-202.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "vehicle", 45-2-101.
Criminal mischief, 45-6-101.
Theft, 45-6-301.
Unauthorized use of motor vehicles, 45-6-308.

45-6-203. Criminal trespass to property. (1) A person commits the offense of criminal trespass to property if he knowingly:

(a) enters or remains unlawfully in an occupied structure; or

(b) enters or remains unlawfully in or upon the premises of another.

(2) A person convicted of the offense of criminal trespass to property shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-203.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "premises", 45-2-101.

Definition of "enter or remain unlawfully", 45-6-201.

State conservation officers to enforce — where, 87-1-504.

45-6-204. Burglary. (1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

(2) A person commits the offense of aggravated burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein and:

(a) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he or another participant in the offense is armed with explosives or a weapon; or

(b) in effecting entry or in the course of committing the offense or in immediate flight thereafter, he purposely, knowingly, or negligently inflicts or attempts to inflict bodily injury upon anyone.

(3) A person convicted of the offense of burglary shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-204 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 260, L. 1975; R.C.M. 1947, 94-6-204; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 357, L. 1987.

Cross-References

Definition of "bodily injury", 45-2-101.

Definition of "felony", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "weapon", 45-2-101.

Definition of "enter or remain unlawfully", 45-6-201.

45-6-205. Possession of burglary tools. (1) A person commits the offense of possession of burglary tools when he knowingly possesses any key, tool, instrument, device, or explosive suitable for breaking into an occupied structure or vehicle or any depository designed for the safekeeping of property or any part thereof with the purpose to commit an offense therewith.

(2) A person convicted of possession of burglary tools shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-6-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-205.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "occupied structure", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "possession", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "vehicle", 45-2-101.

Part 3

Theft and Related Offenses

45-6-301. Theft. (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over any part of any benefits provided under Title 39, chapter 71 or 72, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person convicted of the offense of theft of property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense shall be fined $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall be fined $1,000 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) A person convicted of the offense of theft of property exceeding $300 in value or theft of any commonly domesticated hoofed animal shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

(7) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

History: En. 94-6-302 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 22, Ch. 359, L. 1977; R.C.M. 1947, 94-6-302; amd. Sec. 1, Ch. 374, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 581, L. 1983; amd. Sec. 21, Ch. 670, L. 1985; amd. Sec. 65, Ch. 464, L. 1987; amd. Sec. 2, Ch. 739, L. 1991.

Compiler's Comments

1991 Amendment: Inserted second and third sentences in (6)(a) requiring that person convicted of second offense be fined $500 or imprisoned up to 6 months, or both, and requiring that person convicted of third or subsequent offense be fined $1,000 and imprisoned from 30 days to 6 months; and made minor changes in style.

Cross-References

Photographs of items allegedly taken or converted — admissibility procedure, 26-1-608.

Civil penalty for shoplifting, 27-1-718.

Fraudulent obtaining of unemployment benefits, 39-51-3203.

Definition of "deception", 45-2-101.

Definition of "deprive", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "obtains or exerts control", 45-2-101.

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "stolen property", 45-2-101.

Definition of "threat", 45-2-101.

Definition of "value", 45-2-101.

Theft by disposal of stolen property, 45-6-314.

Fraudulent obtaining of public assistance, 53-2-107.

Unlawful transportation of trees, 76-13-601.

Disturbance or theft of traps or trapped animals, 87-3-507.

45-6-302. Theft of lost or mislaid property. (1) A person who obtains control over lost or mislaid property commits the offense of theft when he:

(a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(b) fails to take reasonable measures to restore the property to the owner; and

(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) A person convicted of theft of lost or mislaid property shall be fined not to exceed $500 or be imprisoned in the county jail for a period not to exceed 6 months.

History: En. 94-6-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-303.

Cross-References

Definition of "knowledge", 45-2-101.

Definition of "obtains or exerts control", 45-2-101.

Definition of "owner", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

45-6-303. Offender's interest in the property. (1) It is no defense to a charge of theft of property that the offender has an interest therein when the owner also has an interest to which the offender is not entitled.

(2) It is no defense that theft was from the offender's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses is theft only if it occurs after the parties have ceased living together.

History: En. 94-6-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-306.

Cross-References
Definition of "owner", 45-2-101.
Definition of "property", 45-2-101.
Theft, 45-6-301.

45-6-304. Repealed. Sec. 2, Ch. 188, L. 1991.

History: En. 94-6-314 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-314.

45-6-305. Theft of labor or services or use of property. (1) A person commits the offense of theft when he obtains the temporary use of property, labor, or services of another which are available only for hire, by means of threat or deception or knowing that such use is without the consent of the person providing the property, labor, or services.

(2) A person convicted of theft of labor or services or use of property shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-304.

Cross-References
Definition of "deception", 45-2-101.
Definition of "obtain", 45-2-101.
Definition of "property", 45-2-101.
Definition of "threat", 45-2-101.
Theft, 45-6-301.

45-6-306. Obtaining communication services with intent to defraud. In a prosecution under 45-6-305 for theft of telephone, telegraph, or cable television services, the element of deception is established by proof that the defendant obtained such services by any of the following means:

(1) by use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information;

(2) by installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, or electronically;

(3) by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(4) by making, assembling, or possessing any instrument, apparatus, equipment, or device or the plans or instructions for the making or assembling of any instrument, apparatus, equipment, or device which is designed, adapted, or otherwise intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the existence, place of origin, or destination of any telecommunications.

History: En. 94-6-304.1 by Sec. 1, Ch. 156, L. 1974; amd. Sec. 1, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.1.

Cross-References
Definition of "obtain", 45-2-101.
Definition of "tamper", 45-2-101.

45-6-307. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent telephone credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges;

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunications charges; or

(c) manufactures, assembles, possesses, sells, gives, or otherwise transfers any apparatus, instrument, equipment, or device described in 45-6-306(4) with the purpose that it will be used to avoid the payment of lawful telecommunications charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by telephone, radio, or television; or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

History: En. 94-6-304.2 by Sec. 2, Ch. 175, L. 1977; R.C.M. 1947, 94-6-304.2; amd. Sec. 1, Ch. 282, L. 1979.

45-6-308. Unauthorized use of motor vehicles. (1) A person commits the offense of unauthorized use of motor vehicles if he knowingly operates the automobile, airplane, motorcycle, quadricycle, motorboat, or other motor-propelled vehicle of another without his consent.

(2) A person convicted of unauthorized use of motor vehicles shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. It is an affirmative defense that the offender reasonably believed that the owner would have consented to the operation had he known of it.

History: En. 94-6-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-305; amd. Sec. 14, Ch. 516, L. 1985.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "vehicle", 45-2-101.
Motor Vehicles, Title 61.
"Motorcycle" defined, 61-1-105.
"Quadricycle" defined, 61-1-133.

45-6-309. Failure to return rented or leased personal property. (1) A person commits the offense of failure to return rented or leased personal property if, without notice to and permission of the lessor, he purposely and knowingly fails to return such property within 48 hours after the time provided for such return in the rental agreement, provided that clear written notice, in bold print, of the date and time when return of the property is required and of the penalty prescribed in this section is stated in the rental or lease agreement.

(2) Presentation to the lessor by the lessee of identification that is false for the purpose of obtaining a rental or lease agreement constitutes prima facie evidence of commission of the offense.

(3) After the rental or lease period specified in the rental or lease agreement has expired, failure to return rented or leased personal property within 72 hours of written demand by the lessor, sent by certified mail to the renter or lessee at the address given at the time of entering the rental or lease agreement, constitutes prima facie evidence of commission of the offense.

(4) (a) A person convicted of failure to return rented or leased personal property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) A person convicted of failure to return rented or leased personal property exceeding $300 in value shall be imprisoned in the state prison for a term not to exceed 10 years.

History: En. Sec. 1, Ch. 239, L. 1981; amd. Sec. 3, Ch. 581, L. 1983.

45-6-310. Definition — computer use. As used in 45-6-311, the term "obtain the use of" means to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network or to cause another to instruct, communicate with, store data in, retrieve data from, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, or computer network.

History: En. Sec. 2, Ch. 485, L. 1981.

45-6-311. Unlawful use of a computer. (1) A person commits the offense of unlawful use of a computer if he knowingly or purposely:

(a) obtains the use of any computer, computer system, or computer network without consent of the owner;

(b) alters or destroys or causes another to alter or destroy a computer program or computer software without consent of the owner; or

(c) obtains the use of or alters or destroys a computer, computer system, computer network, or any part thereof as part of a deception for the purpose of obtaining money, property, or computer services from the owner of the computer, computer system, computer network, or part thereof or from any other person.

(2) A person convicted of the offense of unlawful use of a computer involving property not exceeding $300 in value shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of the offense of unlawful use of a computer involving property exceeding $300 in value shall be fined not more than 2 ½ times the value of the property used, altered, destroyed, or obtained or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 3, Ch. 485, L. 1981; amd. Sec. 4, Ch. 581, L. 1983.

45-6-312. Unauthorized acquisition or transfer of food stamps. (1) A person commits the offense of unauthorized acquisition or transfer of food stamps if he knowingly:

(a) acquires, purchases, possesses, or uses any food stamp or coupon that he is not entitled to; or

(b) transfers, sells, trades, gives, or otherwise disposes of any food stamp or coupon to another person not entitled to receive or use it.

(2) A person convicted of an offense under this section shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months, or both. A person convicted of an offense under this section, which offense is part of a common scheme or in which the value of the food stamps exceeds $150, shall be fined not more than $50,000 or be imprisoned in the state prison for not more than 10 years, or both.

(3) As used in this section, "food stamp or coupon" means any stamp, coupon, or type of certification provided for the purchase of eligible food pursuant to the Food Stamp Act of 1977, 7. U.S.C. 2011 through 2029, or any similar public assistance program.

History: En. Sec. 1, Ch. 87, L. 1983.

Cross-References

"Common scheme" defined, 45-2-101.

45-6-313 reserved.

45-6-314. Theft by disposal of stolen property. A pawnbroker or dealer who buys and sells secondhand merchandise and allows stolen property to be sold, bartered, or otherwise disposed of after a peace officer has requested him to hold the property for 30 days, as provided in 46-5-212, commits the offense of theft as defined in 45-6-301.

History: En. Sec. 1, Ch. 470, L. 1989.

Cross-References

Definition of "peace officer", 45-2-101.

Definition of "stolen property", 45-2-101.

Penalty for theft, 45-6-301.

Pawnbroker to surrender stolen property, 46-5-212.

45-6-315. Defrauding creditors. (1) A person commits the offense of defrauding secured creditors if he destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose to hinder enforcement of that interest.

(2) "Security interest" means an interest in personal property or fixtures as defined in the Uniform Commercial Code (30-1-201(37)).

(3) A person convicted of the offense of defrauding secured creditors shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(4) A person who destroys, conceals, encumbers, transfers, removes from the state, or otherwise deals with property subject to a security interest with the purpose of depriving the owner of the property or of the proceeds and value therefrom may be prosecuted under 45-6-301.

History: En. 94-6-313 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 367, L. 1975; R.C.M. 1947, 94-6-313.

Cross-References

Definition of "security interest", 30-1-201.

Definition of "property", 45-2-101.

Definition of "purpose", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-316. Issuing a bad check. (1) A person commits the offense of issuing a bad check when he issues or delivers a check or other order upon a real or fictitious depository for the payment of money knowing that it will not be paid by the depository.

(2) If the offender has an account with the depository, failure to make good the check or other order within 5 days after written notice of nonpayment has been received by the issuer is prima facie evidence that he knew that it would not be paid by the depository.

(3) A person convicted of issuing a bad check shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months,

or both. If the offender has engaged in issuing bad checks which are part of a common scheme or if the value of any property, labor, or services obtained or attempted to be obtained exceeds $300, he shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-6-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-309; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 5, Ch. 581, L. 1983; amd. Sec. 1, Ch. 383, L. 1985.

Cross-References

Treble damages for issuing bad check, 27-1-717.

Definition of "common scheme", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "value", 45-2-101.

45-6-317. Deceptive practices. (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) using a credit card which was issued to another without the other's consent;

(ii) using a credit card that has been revoked or canceled;

(iii) using a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) using the pretended number or description of a fictitious credit card;

(v) using a credit card which has expired provided the credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds $300, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-6-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 23, Ch. 359, L. 1977; R.C.M. 1947, 94-6-307; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 6, Ch. 581, L. 1983.

Cross-References

Applicability of Real Estate License Act, 37-51-104.

Definition of "deception", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "property", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "threat", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-318. Deceptive business practices. (1) A person commits the offense of deceptive business practices if in the course of engaging in a business, occupation, or profession he purposely or knowingly:

(a) uses or possesses for use a false weight or measure or any other device for falsely determining or recording any quality or quantity;

(b) sells, offers, exposes for sale, or delivers less than the represented quantity of any commodity or service;

(c) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnished the weight or measure;

(d) sells, offers, or exposes for sale adulterated commodities;

(e) sells, offers, or exposes for sale mislabeled commodities; or

(f) makes a deceptive statement regarding the quantity or price of goods in any advertisement addressed to the public.

(2) "Adulterated" means varying from the standard of composition or quality prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage.

(3) "Mislabeled" means:

(a) varying from the standard of truth or disclosure in labeling prescribed by statute or lawfully promulgated administrative regulation or, if none, as set by established commercial usage; or

(b) represented as being another person's produce though otherwise labeled accurately as to quality and quantity.

(4) A person convicted of the offense of deceptive business practices shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-6-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-308.

Cross-References

Applicability of Real Estate License Act, 37-51-104.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Criminal responsibility of corporation, 45-2-311.

45-6-319. Chain distributor schemes. (1) As used in this section, the following definitions apply:

(a) "Person" means a natural person, corporation, partnership, trust, or other entity; and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity.

(b) "Chain distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition.

(2) It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

(3) Any person violating the provisions of this section shall, upon conviction, be imprisoned in the state prison for a period not to exceed 1 year or fined not to exceed $1,000, or both.

(4) Any person convicted of a second offense under this section shall be imprisoned in the state prison for a period not to exceed 5 years or fined not to exceed $5,000, or both.

History: En. Secs. 1 to 3, Ch. 465, L. 1973; amd. Sec. 24, Ch. 359, L. 1977; R.C.M. 1947, 94-6-308.1.

45-6-320 through 45-6-324 reserved.

45-6-325. Forgery. (1) A person commits the offense of forgery when with purpose to defraud he knowingly:

(a) without authority makes or alters any document or other object apparently capable of being used to defraud another in such manner that it purports to have been made by another or at another time or with different provisions or of different composition;

(b) issues or delivers such document or other object knowing it to have been thus made or altered;

(c) possesses with the purpose of issuing or delivering any such document or other object knowing it to have been thus made or altered; or

(d) possesses with knowledge of its character any plate, die, or other device, apparatus, equipment, or article specifically designed for use in counterfeiting or otherwise forging written instruments.

(2) A purpose to defraud means the purpose of causing another to assume, create, transfer, alter, or terminate any right, obligation, or power with reference to any person or property.

(3) A document or other object capable of being used to defraud another includes but is not limited to one by which any right, obligation, or power with reference to any person or property may be created, transferred, altered, or terminated.

(4) A person convicted of the offense of forgery shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. If the forgery is part of a common scheme or if the value of the property, labor, or services obtained or attempted to be obtained exceeds $300, the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 20 years, or both.

History: En. 94-6-310 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-310; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 7, Ch. 581, L. 1983.

Cross-References

Definition of "common scheme", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "property", 45-2-101.
Definition of "purpose", 45-2-101.
Definition of "value", 45-2-101.

45-6-326. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys, or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, or firearm with the purpose to conceal, misrepresent, or transfer any such machine, vehicle, electrical device, or firearm; or

(b) possesses with the purpose to conceal, misrepresent, or transfer any machine, vehicle, device, or firearm knowing that the serial number or other identification number or mark has been removed or otherwise obscured.

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.

History: En. 94-6-311 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 167, L. 1977; R.C.M. 1947, 94-6-311.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "vehicle", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-6-327. Illegal branding or altering or obscuring a brand. (1) A person commits the offense of illegal branding or altering or obscuring a brand if he marks or brands any commonly domesticated hoofed animal or removes, covers, alters, or defaces any existing mark or brand on any commonly domesticated hoofed animal with the purpose to obtain or exert unauthorized control over said animal or with the purpose to conceal, misrepresent, transfer, or prevent identification of said animal.

(2) A person convicted of the offense of illegal branding or altering or obscuring a brand shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-312 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-6-312; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "obtains or exerts control", 45-2-101.

Definition of "purpose", 45-2-101.

Criminal responsibility of corporations, 45-2-311.

CHAPTER 7

OFFENSES AGAINST PUBLIC ADMINISTRATION

Part 1 — Bribery and Corrupt Influence

45-7-101. Bribery in official and political matters.
45-7-102. Threats and other improper influence in official and political matters.
45-7-103. Compensation for past official behavior.
45-7-104. Gifts to public servants by persons subject to their jurisdiction.

Part 2 — Perjury and Other Falsification in Official Matters

45-7-201. Perjury.
45-7-202. False swearing.
45-7-203. Unsworn falsification to authorities.
45-7-204. False alarms to agencies of public safety.
45-7-205. False reports to law enforcement authorities.
45-7-206. Tampering with witnesses and informants.
45-7-207. Tampering with or fabricating physical evidence.

45-7-208. Tampering with public records or information.
45-7-209. Impersonating a public servant.
45-7-210. False claims to public agencies.

Part 3 — Obstructing Governmental Operations

45-7-301. Resisting arrest.
45-7-302. Obstructing a peace officer or other public servant.
45-7-303. Obstructing justice.
45-7-304. Failure to aid a peace officer.
45-7-305. Compounding a felony.
45-7-306. Escape.
45-7-307. Transferring illegal articles or unauthorized communication.
45-7-308. Bail-jumping.
45-7-309. Criminal contempt.

Part 4 — Official Misconduct

45-7-401. Official misconduct.

Part 5 — Employer Misconduct

45-7-501. Employer misconduct.

Part 1

Bribery and Corrupt Influence

45-7-101. Bribery in official and political matters. (1) A person commits the offense of bribery if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(c) any benefit as consideration for a violation of a known duty as a public servant or party official.

(2) It is no defense to prosecution under this section that a person whom the offender sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted of the offense of bribery shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both, and shall forever be disqualified from holding any public office in this state.

History: En. 94-7-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-102; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of "administrative proceeding", 45-2-101.

Definition of "benefit", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "party official", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "solicit", 45-2-101.

Improperly influencing grain inspector, sampler, or weigher, 80-4-703.

45-7-102. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) threatens harm to any public servant with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(c) threatens harm to any public servant or party official with the purpose to influence him to violate his duty;

(d) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law; or

(e) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

(2) It is no defense to prosecution under subsections (1)(a) through (1)(d) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender shall be fined not to exceed $50,000 or be imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. 94-7-103 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 25, Ch. 359, L. 1977; R.C.M. 1947, 94-7-103; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Election and campaign practices and criminal provisions, Title 13, ch. 35.

Definition of "administrative proceeding", 45-2-101.

Definition of "party official", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purpose", 45-2-101.

Definition of "threat", 45-2-101.

Intimidation, 45-5-203.

45-7-103. Compensation for past official behavior. (1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having, as a public servant, given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in another's favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

(2) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-104 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 26, Ch. 359, L. 1977; R.C.M. 1947, 94-7-104.

Cross-References

Definition of "administrative proceeding", 45-2-101.

Definition of "knowingly", 45-2-101.

Definition of "pecuniary benefit", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "solicit", 45-2-101.

45-7-104. Gifts to public servants by persons subject to their jurisdiction. (1) No public servant in any department or agency exercising regulatory function, conducting inspections or investigations, carrying on a civil or criminal litigation on behalf of the government, or having custody of prisoners shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be subject to such regulation, inspection, investigation, or custody or against whom such litigation is known to be pending or contemplated.

(2) No public servant having any discretionary function to perform in connection with contracts, purchases, payments, claims, or other pecuniary transactions of the government shall solicit, accept, or agree to accept any pecuniary benefit from any person known to be interested in or likely to become interested in any such contract, purchase, payment, claim, or transaction.

(3) No public servant having judicial or administrative authority and no public servant employed by or in a court or other tribunal having such authority or participating in the enforcement of its decision shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before such public servant or tribunal with which he is associated.

(4) No legislator or public servant employed by the legislature or by any committee or agency thereof shall solicit, accept, or agree to accept any pecuniary benefit from a person known to be interested in or likely to become interested in any matter before the legislature or any committee or agency thereof.

(5) This section shall not apply to:

(a) fees prescribed by law to be received by a public servant or any other benefit for which the recipient gives legitimate consideration or to which he is otherwise entitled; or

(b) trivial benefits incidental to personal, professional, or business contacts and involving no substantial risk of undermining official impartiality.

(6) No person shall knowingly confer or offer or agree to confer any benefit prohibited by subsections (1) through (5).

(7) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-105 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-105.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "pecuniary benefit", 45-2-101.
Definition of "public servant", 45-2-101.
Definition of "solicit", 45-2-101.

Part 2

Perjury and Other Falsification in Official Matters

45-7-201. Perjury. (1) A person commits the offense of perjury if in any official proceeding he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of a statement previously made, when the statement is material.

(2) A person convicted of perjury shall be punished by imprisonment in the state prison for any term not to exceed 10 years or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

(3) Falsification is material, regardless of the admissibility of the statement under rules of evidence, if it could have affected the course or outcome of the proceeding. It is no defense that the declarant mistakenly believed the falsification to be immaterial. Whether a falsification is material in a given factual situation is a question of law.

(4) It is not a defense to prosecution under this section that the oath or affirmation was administered or taken in an irregular manner or that the declarant was not competent to make the statement. A document purporting to be made upon oath or affirmation at any time when the offender presents it as being so verified shall be deemed to have been duly sworn or affirmed.

(5) No person shall be guilty of an offense under this section if he retracted the falsification in the course of the proceeding in which it was made before it became manifest that the falsification was or would be exposed and before the falsification substantially affected the proceeding.

(6) Where the defendant made inconsistent statements under oath or equivalent affirmation, both having been made within the period of the statute of limitations, the prosecution may proceed by setting forth the inconsistent statements in a single count alleging in the alternative that one or the other was false and not believed by the defendant. In such case it shall not be necessary for the prosecution to prove which statement was false but only that one or the other was false and not believed by the defendant to be true.

(7) No person shall be convicted of an offense under this section where proof of falsity rests solely upon the testimony of a single person other than the defendant.

History: En. 94-7-202 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-202; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References
General time limitations, 45-1-205.
Periods excluded from limitation, 45-1-206.
Definition of "knowingly", 45-2-101.
Definition of "offense", 45-2-101.

Definition of "official proceeding", 45-2-101.

45-7-202. False swearing. (1) A person commits the offense of false swearing if he knowingly makes a false statement under oath or equivalent affirmation or swears or affirms the truth of such a statement previously made when he does not believe the statement to be true and:

(a) the falsification occurs in an official proceeding;

(b) the falsification is purposely made to mislead a public servant in performing his official function; or

(c) the statement is one which is required by law to be sworn or affirmed before a notary or other person authorized to administer oaths.

(2) Subsections (4) to (7) of 45-7-201 apply to this section.

(3) A person convicted of false swearing shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-203 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-203.

Cross-References

Deceptive election practices, 13-35-207.

Application for certain property classifications, 15-6-151.

False affirmation in response to elector challenge, 20-20-303.

Assumed business name filings — false swearing, 30-13-218.

Trademark filings — false swearing, 30-13-319.

Business corporation filings — false swearing, 35-1-428.

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

False information in driver's license application, 61-5-303.

Aircraft registration violations, 67-3-202.

False statement that public officer is not enforcing Montana Strip and Underground Mine Siting Act, 82-4-142.

False statement that public officer is not enforcing Montana Strip and Underground Mine Reclamation Act, 82-4-252.

Affidavit stating metal mine reclamation law is not being enforced, 82-4-354.

45-7-203. Unsworn falsification to authorities. (1) A person commits an offense under this section if, with purpose to mislead a public servant in performing his official function, he:

(a) makes any written false statement which he does not believe to be true;

(b) purposely creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading;

(c) submits or invites reliance on any writing which he knows to be forged, altered, or otherwise lacking in authenticity; or

(d) submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-204 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-204.

Cross-References

Falsified petition for recall of a state-district officer, 2-16-612.

False report by employer of lobbyist, 5-7-209.

False entry upon a petition for ballot issue, 13-27-106.

Deceptive election practices, 13-35-207.
False statement to obtain unemployment benefits, 39-51-3202.
Definition of "benefit", 45-2-101.
Definition of "pecuniary benefit", 45-2-101.
Definition of "public servant", 45-2-101.
Definition of "purpose", 45-2-101.

45-7-204. False alarms to agencies of public safety. (1) A person commits an offense under this section if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, which deals with emergencies involving danger to life or property.

(2) A person convicted of an offense under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-205 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-205.

Cross-References
Definition of "knowingly", 45-2-101.
Intimidation, 45-5-203.

45-7-205. False reports to law enforcement authorities. (1) A person commits an offense under this section if he knowingly:

(a) gives false information to any law enforcement officer with the purpose to implicate another;

(b) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(c) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(2) A person convicted under this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-206 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-206.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "offense", 45-2-101.

45-7-206. Tampering with witnesses and informants. (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or thing;

(c) elude legal process summoning him to testify or supply evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-207 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 27, Ch. 359, L. 1977; R.C.M. 1947, 94-7-207; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "witness", 45-2-101.

45-7-207. Tampering with or fabricating physical evidence. (1) A person commits the offense of tampering with or fabricating physical evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:

(a) alters, destroys, conceals, or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose to mislead any person who is or may be engaged in such proceeding or investigation.

(2) A person convicted of tampering with or fabricating physical evidence shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-208 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-208; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "official proceeding", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-208. Tampering with public records or information. (1) A person commits the offense of tampering with public records or information if he:

(a) knowingly makes a false entry in or false alteration of any record, document, legislative bill or enactment, or thing belonging to or received, issued, or kept by the government for information or record or required by law to be kept by others for information of the government;

(b) makes, presents, or uses any record, document, or thing knowing it to be false and with purpose that it be taken as a genuine part of information or records referred to in subsection (1)(a); or

(c) purposely destroys, conceals, removes, or otherwise impairs the verity or availability of any such record, document, or thing.

(2) A person convicted of the offense of tampering with public records or information shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-209 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-209; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Tampering with petition for recall of a state-district officer, 2-16-612.

Tampering with petition for ballot issue, 13-27-106.

Tampering with election records and information, 13-35-205.

Tampering with election equipment, 13-35-206.

Deceptive election practices, 13-35-207.

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-209. Impersonating a public servant. (1) A person commits the offense of impersonating a public servant if he falsely pretends to hold a position in the public service with purpose to induce another to submit to such pretended official authority or otherwise to act in reliance upon that pretense to his prejudice.

(2) A person convicted of impersonating a public servant shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-210 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-210.

Cross-References

Definition of "acts", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

45-7-210. False claims to public agencies. (1) A person commits an offense under this section if he purposely and knowingly presents for allowance or for payment any false or fraudulent claim, bill, account, voucher, or writing to any public agency, public servant, or contractor authorized to allow or pay claims presented to public agencies if genuine.

(2) (a) Except as provided in subsection (2)(b), a person convicted of an offense under this section shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) If false or fraudulent claims are submitted purposely and knowingly as part of a common scheme or if the value of the claim or the aggregate value of all claims exceeds $300, a person convicted of an offense under this section shall be fined not to exceed $10,000 or imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. Sec. 1, Ch. 151, L. 1981; amd. Sec. 8, Ch. 581, L. 1983.

Cross-References

Civil penalty for filing false claim, 17-8-231.

Fraudulent act by public contractor, 37-71-301.

Part 3

Obstructing Governmental Operations

45-7-301. Resisting arrest. (1) A person commits the offense of resisting arrest if he knowingly prevents or attempts to prevent a peace officer from effecting an arrest by:

(a) using or threatening to use physical force or violence against the peace officer or another; or

(b) using any other means which creates a risk of causing physical injury to the peace officer or another.

(2) It is no defense to a prosecution under this section that the arrest was unlawful, provided the peace officer was acting under color of his official authority.

(3) A person convicted of the offense of resisting arrest shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

History: En. 94-7-301 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-301.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "peace officer", 45-2-101.

Definition of "threat", 45-2-101.

Use of force in defense of person, 45-3-102.

Use of force in resisting arrest, 45-3-108.

Method of arrest, 46-6-104.

Manner of arrest without a warrant, 46-6-312.

45-7-302. Obstructing a peace officer or other public servant. (1) A person commits the offense of obstructing a peace officer or public servant if he knowingly obstructs, impairs, or hinders the enforcement of the criminal law, the preservation of the peace, or the performance of a governmental function.

(2) It is no defense to a prosecution under this section that the peace officer was acting in an illegal manner, provided he was acting under color of his official authority.

(3) A person convicted of the offense of obstructing a peace officer or other public servant shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-302 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-302.

Cross-References

Definition of "public servant", 7-1-4138, 45-2-101.

Interference with election officials, 13-35-203.

Definition of "knowingly", 45-2-101.

Definition of "peace officer", 45-2-101.

Interference with commissioners of irrigation district, 85-7-1924.

45-7-303. Obstructing justice. (1) For the purpose of this section "an offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(2) A person commits the offense of obstructing justice if, knowing a person is an offender, he purposely:

(a) harbors or conceals an offender;

(b) warns an offender of impending discovery or apprehension, except this does not apply to a warning given in connection with an effort to bring an offender into compliance with the law;

(c) provides an offender with money, transportation, weapon, disguise, or other means of avoiding discovery or apprehension;

(d) prevents or obstructs by means of force, deception, or intimidation anyone from performing an act that might aid in the discovery or apprehension of an offender;

(e) suppresses by act of concealment, alteration, or destruction any physical evidence that might aid in the discovery or apprehension of an offender; or

(f) aids an offender who is subject to official detention to escape from such official detention.

(3) A person convicted of obstructing justice shall be:

(a) imprisoned in the state prison for a term not to exceed 10 years if the offender has been or is liable to be charged with a felony; or

(b) fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, if the offender has been or is liable to be charged with a misdemeanor.

History: En. 94-7-303 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-303.

Cross-References
Definition of "knowingly", 45-2-101.
Definition of "offender", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "purposely", 45-2-101.

45-7-304. Failure to aid a peace officer. (1) A peace officer may order a person to cooperate where it is reasonable for the peace officer to enlist the cooperation of such person in:

(a) effectuating or securing an arrest of another pursuant to 46-6-402; or

(b) preventing the commission by another of an offense.

(2) A person commits the offense of failure to aid a peace officer if he knowingly refuses to obey such an order.

(3) A person convicted of the offense of failure to aid a peace officer shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-304 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-304.

Cross-References
Definition of "another", 45-2-101.
Definition of "offense", 45-2-101.
Definition of "peace officer", 45-2-101.
Assisting a peace officer, 46-6-402.

45-7-305. Compounding a felony. (1) A person commits the offense of compounding a felony if he knowingly accepts or agrees to accept any pecuniary benefit in consideration for:

(a) refraining from seeking prosecution of a felony; or

(b) refraining from reporting to law enforcement authorities the commission or suspected commission of any felony or information relating to a felony.

(2) A person convicted of compounding a felony shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-305 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-305.

Cross-References
Definition of "felony", 45-2-101.
Definition of "knowingly", 45-2-101.
Definition of "misdemeanor", 45-2-101.
Bribery in official and political matters, 45-7-101.
Gifts to public servants by person subject to their jurisdiction, 45-7-104.

45-7-306. Escape. (1) "Official detention" means imprisonment which resulted from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, placement in a community corrections facility or program, supervision while under a supervised release program, participation in a county jail work program under 7-32-2225 through 7-32-2227, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "Official detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(2) A person subject to official detention commits the offense of escape if he knowingly or purposely removes himself from official detention or fails to return to official detention following temporary leave granted for a specific purpose or limited time. A person also commits the offense of escape if he is

participating in a county jail work program under 7-32-2225 through 7-32-2227 and he knowingly or purposely fails to appear for work at a time and place scheduled for participation in the program.

(3) A person convicted of the offense of escape shall be:

(a) imprisoned in the state prison for a term not to exceed 20 years if he escapes from or while in transit to or from a state prison, county jail, city jail, community corrections facility or program, or supervised release program by the use or threat of force, physical violence, weapon, or simulated weapon;

(b) imprisoned in the state prison for a term not to exceed 10 years if he:

(i) has been charged with or convicted of a felony and escapes from or while in transit to or from a state prison, county jail, city jail, halfway house, life skills center, community corrections facility or program, or supervised release program; or

(ii) escapes from or while in transit to or from another official detention by the use or threat of force, physical violence, weapon, or simulated weapon; or

(c) fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both, if he commits escape, including escape while in transit to or from official detention, under circumstances other than (a) and (b) of this subsection.

History: En. 94-7-306 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-306; amd. Sec. 1, Ch. 72, L. 1981; amd. Sec. 8, Ch. 583, L. 1981; amd. Sec. 5, Ch. 361, L. 1989; amd. Sec. 1, Ch. 114, L. 1991; amd. Sec. 16, Ch. 554, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 114 in (3)(a), (3)(b)(i), (3)(b)(ii), and (3)(c) inserted reference to escape while in transit; and at beginning of (3)(b)(i) inserted "has been charged with or convicted of a felony and".

Chapter 554 in (1), in first sentence after "deportation", inserted "placement in a community corrections facility or program"; and in (3)(a) and (3)(b)(i) inserted "community corrections facility or program". Amendment effective July 1, 1991.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "offense", 45-2-101.

Definition of "official detention", 45-2-101.

Definition of "peace officer", 45-2-101.

Definition of "purposely", 45-2-101.

Definition of "threat", 45-2-101.

Definition of "weapon", 45-2-101.

Resisting arrest, 45-7-301.

Escape while on prisoner furlough program, 46-23-426.

Expense of trial for offenses committed in prison, 53-30-110.

45-7-307. Transferring illegal articles or unauthorized communication. (1) (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any illegal article or thing to a person subject to official detention or is transferred any illegal article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed 20 years, if he conveys a weapon to a person subject to official detention;

(ii) imprisoned in the state prison for a term not to exceed 10 years, if he conveys a dangerous drug, as defined in 50-32-101, to a person subject to official detention; or

(iii) fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both, if he conveys any other illegal article or thing to a person subject to official detention.

(c) Subsection (1)(b)(iii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both.

History: En. 94-7-307 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 28, Ch. 359, L. 1977; R.C.M. 1947, 94-7-307; amd. Sec. 1, Ch. 413, L. 1987.

Cross-References

Definition of "knowingly", 45-2-101.
Definition of "official detention", 45-2-101.
Definition of "purposely", 45-2-101.
Definition of "weapon", 45-2-101.

45-7-308. Bail-jumping. (1) A person commits the offense of bail-jumping if, having been set at liberty by court order, with or without security, upon condition that he will subsequently appear at a specified time and place, he purposely fails without lawful excuse to appear at that time and place.

(2) This section shall not interfere with the exercise by any court of its power to punish for contempt.

(3) This section shall not apply to a person set at liberty by court order upon condition that he will appear in connection with a charge of having committed a misdemeanor, except it shall apply where the judge has released the defendant on his own recognizance.

(4) A person convicted of bail-jumping in connection with a felony shall be imprisoned in the state prison for a term not to exceed 10 years. In all other cases he shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-308 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-308.

Cross-References

Definition of "misdemeanor", 45-2-101.
Definition of "purposely", 45-2-101.
Escape, 45-7-306.
Bail, Title 46, ch. 9.

45-7-309. Criminal contempt. (1) A person commits the offense of criminal contempt when he knowingly engages in any of the following conduct:

(a) disorderly, contemptuous, or insolent behavior committed during the sitting of a court in its immediate view and presence and directly tending to interrupt its proceedings or to impair the respect due to its authority;

(b) breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceeding;

(c) purposely disobeying or refusing any lawful process or other mandate of a court;

(d) unlawfully refusing to be sworn as a witness in any court proceeding or, after being sworn, refusing to answer any legal and proper interrogatory;

(e) purposely publishing a false or grossly inaccurate report of a court's proceeding; or

(f) purposely failing to obey any mandate, process, or notice relative to juries issued pursuant to Title 3, chapter 15.

(2) A person convicted of the offense of criminal contempt shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-309 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-309.

Cross-References

Definition of "knowingly", 45-2-101.

Definition of "purposely", 45-2-101.

Part 4

Official Misconduct

45-7-401. Official misconduct. (1) A public servant commits the offense of official misconduct when in his official capacity he commits any of the following acts:

(a) purposely or negligently fails to perform any mandatory duty as required by law or by a court of competent jurisdiction;

(b) knowingly performs an act in his official capacity which he knows is forbidden by law;

(c) with the purpose to obtain advantage for himself or another, performs an act in excess of his lawful authority;

(d) solicits or knowingly accepts for the performance of any act a fee or reward which he knows is not authorized by law; or

(e) knowingly conducts a meeting of a public agency in violation of 2-3-203.

(2) A public servant convicted of the offense of official misconduct shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) The district court shall have exclusive jurisdiction in prosecutions under this section. Any action for official misconduct must be commenced by an information filed after leave to file has been granted by the district court or after a grand jury indictment has been found.

(4) A public servant who has been charged as provided in subsection (3) may be suspended from his office without pay pending final judgment. Upon final judgment of conviction he shall permanently forfeit his office. Upon acquittal he shall be reinstated in his office and shall receive all backpay.

(5) This section does not affect any power conferred by law to impeach or remove any public servant or any proceeding authorized by law to carry into effect such impeachment or removal.

History: En. 94-7-401 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 474, L. 1975; R.C.M. 1947, 94-7-401.

Cross-References

Meetings of public agencies to be open to public — exceptions, 2-3-203.

Discharge of election law duties, 13-35-204.

Prosecution of Commissioner of Political Practices, 13-37-105.

Definition of "knowingly", 45-2-101.

Definition of "negligently", 45-2-101.

Definition of "public servant", 45-2-101.

Definition of "purposely", 45-2-101.

Bribery in official and political matters, 45-7-101.

Gifts to public servants by person subject to their jurisdiction, 45-7-104.

Employee disclosure of information which would identify patient, 50-5-106.

Removal of Public Service Commission member, 69-1-113.

Official misconduct of official grain inspector, sampler, or weigher, 80-4-703.

Violations by Commissioner of irrigation district, 85-7-1507.

Part 5

Employer Misconduct

45-7-501. Employer misconduct. (1) A person who is an employer, as defined in 39-71-117, commits the offense of employer misconduct if he knowingly or purposely:

(a) avoids his responsibility to provide coverage for his employees as required by 39-71-401;

(b) misrepresents or falsifies employment records or information, including but not limited to understating the amount of payroll or the number of his employees; or

(c) refuses to pay premiums that he is obligated to pay under compensation plan No. 2, as provided in Title 39, chapter 71, part 22, or compensation plan No. 3, as provided in Title 39, chapter 71, part 23.

(2) A person convicted of the offense of employer misconduct shall be fined an amount not to exceed $50,000 or imprisoned in the state prison for any term not to exceed 10 years, or both.

History: En. Sec. 2, Ch. 586, L. 1987.

CHAPTER 8

OFFENSES AGAINST PUBLIC ORDER

Part 1 — Conduct Disruptive of Public Order

45-8-101. Disorderly conduct.
45-8-102. Failure of disorderly persons to disperse.
45-8-103. Riot.
45-8-104. Incitement to riot.
45-8-105. Criminal syndicalism.
45-8-106. Bringing armed men into the state.
45-8-107. Purpose.
45-8-108. Definitions.
45-8-109. Prohibited activities — penalties — exceptions.
45-8-110 reserved.
45-8-111. Public nuisance.
45-8-112. Action to abate a public nuisance.

45-8-113. Creating a hazard.
45-8-114. Failure to yield party line.
45-8-115. Illegal posting of state and federal land.

Part 2 — Offensive, Indecent, and Inhumane Conduct

45-8-201. Obscenity.
45-8-202. Repealed.
45-8-203. Certain motion picture theater employees not liable for prosecution.
45-8-204. Repealed.
45-8-205. Definitions.
45-8-206. Public display or dissemination of obscene material to minors.
45-8-207. Notice of violation.
45-8-208. Penalties.
45-8-209. Harming a police dog — penalty.
45-8-210. Causing animals to fight — owners, trainers, and spectators — penalties — exception — definition.
45-8-211. Cruelty to animals — exception
45-8-212. Criminal defamation.
45-8-213. Privacy in communications.
45-8-214. Bribery in contests.
45-8-215. Desecration of flags.
45-8-216. Unlawful automated telephone solicitation — exceptions — penalties.

Part 3 — Weapons

45-8-301. Uniformity of interpretation.
45-8-302. Definitions.
45-8-303. Possession or use of machine gun in connection with a crime.
45-8-304. Possession or use of machine gun for offensive purpose.
45-8-305. Presumption of offensive or aggressive purpose.
45-8-306. Presence of gun as evidence of possession or use.
45-8-307. Exceptions.
45-8-308. Manufacturer's register of machine guns.
45-8-309. Registration of machine guns — presumption from failure to register.
45-8-310 through 45-8-314 reserved.
45-8-315. Definition.
45-8-316. Carrying concealed weapons.
45-8-317. Exceptions.
45-8-318. Possession of deadly weapon by prisoner.
45-8-319. Repealed.
45-8-320. Repealed.
45-8-321. Permit to carry concealed weapon.
45-8-322. Application, renewal, permit, and fees.
45-8-323. Denial of renewal — revocation of permit.
45-8-324. Appeal.
45-8-325. Permittee change of county of residence — notification to sheriffs and chief of police.
45-8-326. Immunity from liability.
45-8-327. Carrying a concealed weapon while under the influence.
45-8-328. Carrying concealed weapon in a prohibited place.
45-8-329 and 45-8-330 reserved.
45-8-331. Switchblade knives.
45-8-332. Definitions.
45-8-333. Reckless or malicious use of explosives.
45-8-334. Possession of a destructive device.
45-8-335. Possession of explosives.
45-8-336. Possession of a silencer.
45-8-337. Possession prima facie evidence of unlawful purpose.
45-8-338 reserved.
45-8-339. Carrying firearms on train — penalty.
45-8-340. Sawed-off firearm — penalty.
45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident.

45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state.
45-8-343. Firing firearms.
45-8-344. Use of firearms by children under fourteen prohibited.
45-8-345. Criminal liability of parent or guardian — prosecution.
45-8-346 through 45-8-350 reserved.
45-8-351. Restriction on local government regulation of firearms.

Part 1

Conduct Disruptive of Public Order

45-8-101. Disorderly conduct. (1) A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:

(a) quarreling, challenging to fight, or fighting;

(b) making loud or unusual noises;

(c) using threatening, profane, or abusive language;

(d) discharging firearms, except at a shooting range during established hours of operation;

(e) rendering vehicular or pedestrian traffic impassable;

(f) rendering the free ingress or egress to public or private places impassable;

(g) disturbing or disrupting any lawful assembly or public meeting;

(h) transmitting a false report or warning of a fire or other catastrophe in such a place that its occurrence would endanger human life;

(i) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or

(j) transmitting a false report or warning of an impending explosion in such a place that its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

(3) A person convicted of a violation of subsection (1)(j) shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

History: En. 94-8-101 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-101; amd. Sec. 1, Ch. 508, L. 1989; amd. Sec. 8, Ch. 415, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(d) inserted exception for a shooting range. Amendment effective April 15, 1991.

Applicability: Section 10, Ch. 415, L. 1991, provided: "[This act] applies to shooting ranges in operation on or after [the effective date of this act] [effective April 15, 1991]."

Cross-References

Motorboat noise limitation — violation as disorderly conduct, 23-2-526, 87-1-506.

Knowingly defined, 45-2-101.

45-8-102. Failure of disorderly persons to disperse. (1) Where two or more persons are engaged in disorderly conduct, a peace officer, judge, or mayor may order the participants to disperse. A person who purposely refuses or knowingly fails to obey such an order commits the offense of failure to disperse.

(2) A person convicted of the offense of failure to disperse shall be fined not to exceed $100 or be imprisoned in the county jail for a term not to exceed 10 days, or both.

History: En. 94-8-102 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-102.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Purposely defined, 45-2-101.

45-8-103. Riot. (1) A person commits the offense of riot if he purposely and knowingly disturbs the peace by engaging in an act of violence or threat to commit an act of violence as part of an assemblage of five or more persons, which act or threat presents a clear and present danger of or results in damage to property or injury to persons.

(2) Except as provided in subsection (3), a person convicted of the offense of riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of riot by engaging in an act of violence while incarcerated at any state adult correctional facility or city or county jail shall be imprisoned for not less than 1 year or more than 5 years.

History: En. 94-8-103 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-103; amd. Sec. 1, Ch. 54, L. 1983.

Cross-References

Act defined, 45-2-101.
Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.
Threat defined, 45-2-101.
Failure of disorderly persons to disperse, 45-8-102.

45-8-104. Incitement to riot. (1) A person commits the offense of incitement to riot if he purposely and knowingly commits an act or engages in conduct that urges other persons to riot. Such act or conduct shall not include the mere oral or written advocacy of ideas or expression of belief which advocacy or expression does not urge the commission of an act of immediate violence.

(2) Except as provided in subsection (3), a person convicted of the offense of incitement to riot shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) A person who commits the offense of incitement to riot while incarcerated at any state adult correctional facility shall be imprisoned for not less than 1 year or more than 5 years.

History: En. 94-8-104 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-104; amd. Sec. 2, Ch. 54, L. 1983.

Cross-References

Act defined, 45-2-101.
Knowingly defined, 45-2-101.
Purposely defined, 45-2-101.
Solicitation, 45-4-101.
Riot, 45-8-103.

45-8-105. Criminal syndicalism. (1) "Criminal syndicalism" means the advocacy of crime, malicious damage or injury to property, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism;

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another whose purpose is to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed 10 years.

(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such premises for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-7-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 29, Ch. 359, L. 1977; R.C.M. 1947, 94-7-503.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Possession defined, 45-2-101.
Purposely defined, 45-2-101.

45-8-106. Bringing armed men into the state. (1) A person commits the offense of bringing armed men into the state when he knowingly brings or aids in bringing into this state an armed person or armed body of men for the purpose of engaging in criminal or socially disruptive activities or to usurp the powers of law enforcement authorities.

(2) A person convicted of the offense of bringing armed men into the state shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-7-504 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-504; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Right to bear arms, Art. II, sec. 12, Mont. Const.
Treason, Art. II, sec. 30, Mont. Const.
Civilian control of the military, Art. II, sec. 32, Mont. Const.
Importation of armed persons, Art. II, sec. 33, Mont. Const.
Militia, Title 10, ch. 1.
Knowingly defined, 45-2-101.
Offense defined, 45-2-101.

45-8-107. Purpose. The legislature recognizes every citizen's constitutional right to express beliefs on any subject, to associate with others who share similar beliefs, and to keep or bear arms in defense of home, person, or property. Sections 45-8-107 through 45-8-109 are not intended to interfere with the exercise of rights protected by the United States constitution or the state constitution. The legislature finds that conspiracies and training activities in the furtherance of unlawful acts of violence against persons or property are not constitutionally protected, pose a threat to public order and safety, and are subject to criminal penalties.

History: En. Sec. 1, Ch. 492, L. 1991.

45-8-108. Definitions. As used in 45-8-107 through 45-8-109, unless the context requires otherwise, the following definitions apply:

(1) "Civil disorder" means a public disturbance involving unlawful acts of violence by a group of two or more persons that causes an immediate danger of or results in injury to the property or person of any other individual.

(2) "Governmental military force" means:

(a) the national guard as defined in 10 U.S.C. 101;

(b) the organized militia of a state or territory of the United States, the Commonwealth of Puerto Rico, or the District of Columbia not included in the definition of the national guard; and

(c) the armed forces of the United States.

(3) "Law enforcement agency" means a department of public safety, a police department, a sheriff's department, the highway patrol, or a governmental unit of one or more persons employed by the state or federal government or a political subdivision of the state or federal government, for the purpose of detecting and preventing crime and enforcing laws or ordinances, whose employees are authorized to make arrests for crimes while acting in the scope of their authority.

(4) "Peace officer" has the meaning given in 45-2-101.

History: En. Sec. 2, Ch. 492, L. 1991.

45-8-109. Prohibited activities — penalties — exceptions. (1) A person is guilty of a crime if, with one or more other persons, he purposely or knowingly assembles for the purpose of training in, instructing in the use of, or practicing with any technique or means capable of causing property damage, bodily injury, or death, with the purpose of employing the training, instruction, or practice in a civil disorder.

(2) A person convicted of violating the provisions of subsection (1) is guilty of a felony and shall be imprisoned in the state prison for a period not to exceed 10 years or be fined not to exceed $50,000, or both.

(3) Subsection (1) does not prohibit:

(a) an act protected pursuant to Article II of the Montana constitution;

(b) an act of a governmental military force;

(c) an act of a peace officer performed in the lawful performance of the officer's duties;

(d) an authorized activity of the department of fish, wildlife, and parks; the department of corrections and human services; a law enforcement agency; or the law enforcement academy;

(e) training in nonviolent civil disobedience techniques;

(f) lawful self-defense or defense of others or an activity intended to teach or practice self-defense or self-defense techniques; or

(g) a facility, program, or lawful activity related to firearms instruction or training intended to teach the safe handling and use of firearms or activities or sports related to recreational use or possession of firearms.

(4) Sections 45-8-107 through 45-8-109 do not apply to an employer or employees involved in a labor dispute.

History: En. Sec. 3, Ch. 492, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

45-8-110 reserved.

45-8-111. Public nuisance. (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a)) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) No agricultural or farming operation, place, establishment, or facility or any of its appurtenances or the operation thereof is or becomes a public nuisance because of the normal operation thereof as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

(6) A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of such conduct constitutes a separate offense.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(1) thru (4); amd. Sec. 2, Ch. 123, L. 1981; amd. Sec. 9, Ch. 415, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (5) exempting noise at a shooting range. Amendment effective April 15, 1991.

Applicability: Section 10, Ch. 415, L. 1991, provided: "[This act] applies to shooting ranges in operation on or after [the effective date of this act] [effective April 15, 1991]."

Cross-References

Liability for permitting irrigation water to overflow, 7-14-2141.

Selling liquor illegally on premises, 16-6-312.

Motorboat noise limitation — violation as public nuisance, 23-2-526, 87-1-506.

Nuisances, Title 27, ch. 30.

Mausoleum or columbarium constructed in violation of law, 35-21-712.

Knowingly defined, 45-2-101.

Property defined, 45-2-101.

45-8-112. Action to abate a public nuisance. (1) Every public nuisance may be abated and the persons maintaining such nuisance and the possessor of the premises who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney or any resident of the state.

(2) Upon the filing of the complaint in such action, the judge may issue a temporary injunction.

(3) In such action evidence of the general reputation of the premises is admissible for the purpose of proving the existence of the nuisance.

(4) If the existence of the nuisance is established, an order of abatement shall be entered as part of the judgment in the case. The judge issuing the order may, in his discretion:

(a) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, destroy them, or return them to their rightful ownership;

(b) close the premises for any period not to exceed 1 year, during which period the premises shall remain in the custody of the court;

(c) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture or discharge of the bond shall be as provided in 46-9-502 and 46-9-503; or

(d) any combination of the above.

History: En. 94-8-107 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 30, Ch. 359, L. 1977; R.C.M. 1947, 94-8-107(5).

Cross-References

Nuisance, Title 27, ch. 30.

Premises defined, 45-2-101.

Public nuisance, 45-8-111.

Conditions of bail — violation thereof, 46-9-108, 46-9-502, 46-9-503, 46-9-505, 46-9-512.

45-8-113. Creating a hazard. (1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children a container having a compartment of more than 1 1/2 cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside and fails to remove the door, lid, or locking or fastening device;

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;

(c) tampers with an aircraft without the consent of the owner;

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, continues to use a steam engine or steam boiler which is in an unsafe condition;

(e) being a person in the act of game hunting, acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

(f) deposits any hard substance upon or between any railroad tracks which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. 94-8-108 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 31, Ch. 359, L. 1977; R.C.M. 1947, 94-8-108.

Cross-References

Knowingly defined, 45-2-101.
Negligently defined, 45-2-101.
Possession defined, 45-2-101.
Tamper defined, 45-2-101.
Criminal responsibility of corporations, 45-2-311.
Assault — negligently causing bodily injury to another, 45-5-201.

45-8-114. Failure to yield party line. (1) Any person who fails to relinquish a telephone party line or public pay telephone after he has been requested to do so to permit another to place an emergency call to a fire department or police department or for medical aid or ambulance service shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(2) It is a defense to prosecution under subsection (1) that the accused did not know or did not have reason to know of the emergency in question or that the accused was himself using the telephone party line or public pay telephone for such an emergency call.

(3) Any person who requests another to relinquish a telephone party line or public pay telephone on the pretext that he must place an emergency call, knowing such pretext to be false, shall be imprisoned for a term not to exceed 10 days or fined not to exceed $25, or both.

(4) Every telephone company doing business in this state shall print a copy of subsections (1), (2), and (3) of this section in each telephone directory published by it after January 1, 1974.

History: En. 94-8-109 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-109.

Cross-References

Knowingly defined, 45-2-101.
Criminal responsibility of corporations, 45-2-311.

45-8-115. Illegal posting of state and federal land. (1) A person commits the offense of illegal posting of state or federal land if, without authorization, he knowingly posts land that is under the ownership or control of the state or federal government to restrict access or use of state or federal land.

(2) A person convicted of illegal posting of state or federal land shall be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

History: En. Sec. 1, Ch. 743, L. 1991.

Part 2

Offensive, Indecent, and Inhumane Conduct

45-8-201. Obscenity. (1) A person commits the offense of obscenity when, with knowledge of the obscene nature thereof, he purposely or knowingly:

(a) sells, delivers, or provides or offers or agrees to sell, deliver, or provide any obscene writing, picture, record, or other representation or embodiment of the obscene to anyone under the age of 18;

(b) presents or directs an obscene play, dance, or other performance, or participates in that portion thereof which makes it obscene, to anyone under the age of 18;

(c) publishes, exhibits, or otherwise makes available anything obscene to anyone under the age of 18;

(d) performs an obscene act or otherwise presents an obscene exhibition of his body to anyone under the age of 18;

(e) creates, buys, procures, or possesses obscene matter or material with the purpose to disseminate it to anyone under the age of 18; or

(f) advertises or otherwise promotes the sale of obscene material or materials represented or held out by him to be obscene.

(2) A thing is obscene if:

(a) (i) it is a representation or description of perverted ultimate sexual acts, actual or simulated;

(ii) it is a patently offensive representation or description of normal ultimate sexual acts, actual or simulated; or

(iii) it is a patently offensive representation or description of masturbation, excretory functions, or lewd exhibition of the genitals; and

(b) taken as a whole the material:

(i) applying contemporary community standards, appeals to the prurient interest in sex;

(ii) portrays conduct described in subsection (2)(a)(i), (ii), or (iii) in a patently offensive way; and

(iii) lacks serious literary, artistic, political, or scientific value.

(3) In any prosecution for an offense under this section, evidence shall be admissible to show:

(a) the predominant appeal of the material and what effect, if any, it would probably have on the behavior of people;

(b) the artistic, literary, scientific, educational, or other merits of the material;

(c) the degree of public acceptance of the material in the community;

(d) appeal to prurient interest or absence thereof in advertising or other promotion of the material; or

(e) purpose of the author, creator, publisher, or disseminator.

(4) A person convicted of obscenity shall be fined at least $500 but not more than $1,000 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(5) Cities, towns, or counties may adopt ordinances or resolutions which are more restrictive as to obscenity than the provisions of 45-8-206 and this section.

History: En. 94-8-110 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 407, L. 1975; R.C.M. 1947, 94-8-110; amd. Sec. 1, I.M. 79, app. Nov. 7, 1978; amd. Sec. 5, Ch. 571, L. 1989.

Cross-References

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

Indecent exposure, 45-5-504.

45-8-202. Repealed. Sec. 7, Ch. 571, L. 1989.

History: En. Secs. 1 to 3, Ch. 463, L. 1973; amd. Sec. 2, Ch. 407, L. 1975; amd. Sec. 1, Ch. 391, L. 1977; R.C.M. 1947, 94-8-110.1.

45-8-203. Certain motion picture theater employees not liable for prosecution. (1) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if he has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, has no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he is regularly employed. "Employee" does not include a manager of the motion picture theater.

(2) No employee is liable to prosecution under 45-8-201 and 45-8-206 or under any city or county ordinance for exhibiting or possessing with intent to exhibit any obscene motion picture provided the employee is acting within the scope of his regular employment at a showing open to the public.

History: En. 94-8-110.3 by Sec. 1, Ch. 76, L. 1974; R.C.M. 1947, 94-8-110.3; amd. Sec. 6, Ch. 571, L. 1989.

45-8-204. Repealed. Sec. 18, Ch. 440, L. 1989.

History: En. Secs. 1 to 4, Ch. 430, L. 1973; amd. Sec. 32, Ch. 359, L. 1977; R.C.M. 1947, 94-8-110.2.

45-8-205. Definitions. As used in 45-8-205 through 45-8-208, the following definitions apply:

(1) "Display or dissemination of obscene material to minors" means that quality of a description, exhibition, presentation, or representation, in whatever form, of sexual conduct or sadomasochistic abuse when the material or performance, taken as a whole, has the following characteristics:

(a) its dominant theme appeals to a minor's prurient interest in sex;

(b) it depicts or describes sexual conduct or sadomasochistic abuse in a manner that is patently offensive to contemporary standards in the adult community with respect to what is suitable for minors; and

(c) it lacks serious literary, scientific, artistic, or political value for minors. If the court finds that the material or performance has serious literary, scientific, artistic, or political value for a significant percentage of normal older minors, the material or performance may not be found to lack such value for the entire class of minors.

(2) "Material" means a book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, record, recording tape, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America).

(3) "Minor" means a person under 18 years of age.

(4) "Newsstand" means a stand that distributes or sells newspapers or magazines.

(5) "Performance" means any motion picture, film, or videotape (except a motion picture or videotape rated G, PG, PG-13, or R by the motion picture association of America); phonograph record; compact disk; tape recording; preview; trailer; play; show; skit; dance; or other exhibition played or performed before an audience of one or more, with or without consideration.

(6) "Person" means any individual, partnership, association, corporation, or other legal entity of any kind.

(7) "Prurient interest in sex" means a shameful or morbid interest in sex or excretion.

(8) "Sexual conduct" includes:

(a) vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted. A sexual act is simulated when it gives the appearance of depicting actual sexual activity or the consummation of an ultimate sexual act.

(b) masturbation, excretory functions, or lewd exhibition of uncovered genitals or female breasts;

(c) sadomasochistic abuse, meaning an act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in a revealing or bizarre costume.

(9) "Ultimate sexual act" means vaginal or anal sexual intercourse, fellatio, cunnilingus, or bestiality.

History: En. Sec. 1, Ch. 571, L. 1989.

45-8-206. Public display or dissemination of obscene material to minors. (1) A person having custody, control, or supervision of any commercial establishment or newsstand may not knowingly or purposely:

(a) display obscene material to minors in such a way that minors, as a part of the invited public, will be able to view the material; provided, however, that a person is considered not to have displayed obscene material to minors if the material is kept behind devices commonly known as blinder racks so that the lower two-thirds of the material is not exposed to view or other reasonable efforts were made to prevent view of the material by a minor;

(b) sell, furnish, present, distribute, or otherwise disseminate to a minor or allow a minor to view, with or without consideration, any obscene material; or

(c) present to a minor or participate in presenting to a minor, with or without consideration, any performance that is obscene to minors.

(2) A person does not violate this section if:

(a) he had reasonable cause to believe the minor was 18 years of age. "Reasonable cause" includes but is not limited to being shown a draft card, driver's license, marriage license, birth certificate, educational identification card, governmental identification card, or other official or apparently official card or document purporting to establish that the person is 18 years of age;

(b) the person is, or is acting as, an employee of a bona fide public school, college, or university or a retail outlet affiliated with and serving the educational purposes of a school, college, or university and the material or performance was disseminated in accordance with policies approved by the governing body of the institution;

(c) the person is an officer, director, trustee, or employee of a public library or museum and the material or performance was acquired by the library or museum and disseminated in accordance with policies approved by the governing body of the library or museum;

(d) an exhibition in a state of nudity is for a bona fide scientific or medical purpose for a bona fide school, library, or museum; or

(e) the person is a retail sales clerk with no financial interest in the material or performance or in the establishment displaying or selling the material or performance.

History: En. Sec. 2, Ch. 571, L. 1989.

45-8-207. Notice of violation. Before a county attorney may prosecute a person for a continuing violation of 45-8-206, he shall determine that the material or performance is obscene to minors, give the alleged violator actual notice of the determination and notice that he will be prosecuted if he does not desist, and determine that the violation continued for at least 3 days after notice was received. The person may seek a declaratory judgment on the question whether the material or performance is obscene to minors. The statute of limitations for the offense is tolled while the declaratory judgment or an appeal from it is pending.

History: En. Sec. 3, Ch. 571, L. 1989.

45-8-208. Penalties. (1) A person who is convicted of violating 45-8-206 is guilty of a misdemeanor and may be fined an amount not to exceed $500 or be imprisoned for a term not to exceed 6 months, or both.

(2) For purposes of 45-8-206, multiple copies of the same title, monthly issue, volume and number issue, or other identical material constitutes a single offense.

History: En. Sec. 4, Ch. 571, L. 1989.

45-8-209. Harming a police dog — penalty. (1) A person commits the offense of harming a police dog if he purposely or knowingly shoots, kills, or otherwise injures a police dog being used by a law enforcement officer in discharging or attempting to discharge any legal duty in a reasonable and proper manner.

(2) A person convicted of the offense of harming a police dog may be fined an amount not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 1 year, or both.

(3) As used in this section, the following definitions apply:

(a) "Law enforcement officer" means a person who is a peace officer as defined in 46-1-202.

(b) "Police dog" means a dog that is:

(i) used by a law enforcement agency, as defined in 7-32-201, in the exercise of its authority;

(ii) specifically trained for law enforcement work; and

(iii) under the control of a law enforcement officer.

History: En. Secs. 1, 2, Ch. 536, L. 1985; amd. Sec. 1, Ch. 258, L. 1989; amd. Sec. 258, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In definition of law enforcement officer substituted "46-1-202" for "-46-1-201".

45-8-210. Causing animals to fight — owners, trainers, and spectators — penalties — exception — definition. (1) A person commits the offense of causing animals to fight if he:

(a) owns, possesses, keeps, or trains any animal with the intent that such animal fight or be engaged in an exhibition of fighting with another animal;

(b) allows or causes any animal to fight with another animal or causes any animal to menace or injure another animal for the purpose of sport, amusement, or gain;

(c) knowingly permits any act in violation of subsection (1)(a) or (1)(b) to take place on any premises under his charge or control, or aids or abets any such act;

(d) participates in any exhibition in which animals are fighting for the purpose of sport, amusement, or gain.

(2) A person convicted of violating this section is guilty of a felony and shall be fined an amount not to exceed $5,000 or imprisoned in the state prison for a term of not less than 1 year or more than 5 years, or both such fine and imprisonment.

(3) Nothing in this section prohibits the following:

(a) accepted husbandry practices used in the raising of livestock or poultry;

(b) the use of animals in the normal and usual course of rodeo events; or

(c) the use of animals in hunting and training as permitted by law.

(4) For purposes of this section, "animal" means any cock, bird, dog, or mammal except man.

History: En. Secs. 2, 3, Ch. 410, L. 1985.

45-8-211. Cruelty to animals — exception. (1) A person commits the offense of cruelty to animals if without justification he knowingly or negligently subjects an animal to mistreatment or neglect by:

(a) overworking, beating, tormenting, injuring, or killing any animal;

(b) carrying or confining any animal in a cruel manner;

(c) failing to provide an animal in his custody with:

(i) proper food, drink, or shelter; or

(ii) in cases of immediate, obvious, serious illness or injury, licensed veterinary or other appropriate medical care;

(d) abandoning any helpless animal or abandoning any animal on any highway, railroad, or in any other place where it may suffer injury, hunger, or exposure or become a public charge; or

(e) promoting, sponsoring, conducting, or participating in an animal race of more than 2 miles, except a sanctioned endurance race.

(2) A person convicted of the offense of cruelty to animals shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a second or subsequent offense of cruelty to animals shall be fined not to exceed $1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both. If the person is the owner,

he may be required to forfeit to the county in which he is convicted any animal affected. This provision does not affect the interest of any secured party or other person who has not participated in the offense.

(3) In addition to the sentence provided in subsection (2), the court may require the defendant to pay all reasonable costs incurred in providing necessary veterinary attention and treatment for any animal affected.

(4) Nothing in this section prohibits:

(a) a person from humanely destroying an animal for just cause; or

(b) the use of commonly accepted agricultural and livestock practices on livestock.

History: En. 94-8-106 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-106; amd. Sec. 1, Ch. 148, L. 1985; amd. Sec. 1, Ch. 410, L. 1985; amd. Sec. 1, Ch. 424, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(b) inserted "or confining"; inserted (1)(c)(ii) requiring medical care; in (1)(e) substituted "an animal" for "a horse" and at end inserted exception clause; in (2) inserted second sentence regarding penalty for second or subsequent offenses; inserted (4) establishing exceptions; and made minor changes in style.

Cross-References

Knowingly defined, 45-2-101.

Negligently defined, 45-2-101.

45-8-212. Criminal defamation. (1) Defamatory matter is anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to his or its business or occupation.

(2) Whoever, with knowledge of its defamatory character, orally, in writing, or by any other means communicates any defamatory matter to a third person without the consent of the person defamed commits the offense of criminal defamation and may be sentenced to imprisonment for not more than 6 months in the county jail or a fine of not more than $500, or both.

(3) Violation of subsection (2) is justified if:

(a) the defamatory matter is true and is communicated with good motives and for justifiable ends;

(b) the communication is absolutely privileged;

(c) the communication consists of fair comment made in good faith with respect to persons participating in matters of public concern;

(d) the communication consists of a fair and true report or a fair summary of any judicial, legislative, or other public or official proceedings; or

(e) the communication is between persons each having an interest or duty with respect to the subject matter of the communication and is made with the purpose to further such interest or duty.

(4) No person shall be convicted on the basis of an oral communication of defamatory matter except upon the testimony of at least two other persons that they heard and understood the oral statement as defamatory or upon a plea of guilty.

History: En. 94-8-111 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-111.

Cross-References

Defamatory matter defined, 45-2-101.

Knowledge defined, 45-2-101.

Official proceeding defined, 45-2-101.

Person defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-8-213. Privacy in communications. (1) Except as provided in 69-6-104, a person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the purpose to terrify, intimidate, threaten, harass, annoy, or offend, communicates with any person by telephone and uses any obscene, lewd, or profane language, suggests any lewd or lascivious act, or threatens to inflict injury or physical harm to the person or property of any person (the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);

(b) uses a telephone to attempt to extort money or any other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls are received;

(c) records or causes to be recorded any conversation by use of a hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) does not apply to duly elected or appointed public officials or employees when the transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or to persons given warning of the recording.

(d) by means of any machine, instrument, or contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while it is being sent over a telegraph line;

(ii) learns or attempts to learn the contents of any message while it is in a telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or communicates to others any information so obtained;

(e) discloses the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; or

(f) opens or reads or causes to be read any sealed letter not addressed to himself without being authorized to do so by either the writer of the letter or the person to whom it is addressed or, without the like authority, publishes any of the contents of the letter knowing the same to have been unlawfully opened.

(2) (a) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the county jail for a term not to exceed 1 year or be fined an amount not to exceed $1,000, or both.

(c) On a third or subsequent conviction of subsection (1)(a) or (1)(b), a person shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $10,000, or both.

History: En. 94-8-114 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 33, Ch. 359, L. 1977; R.C.M. 1947, 94-8-114; amd. Sec. 1, Ch. 356, L. 1979; amd. Sec. 1, Ch. 177, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2)(b) establishing a penalty for second conviction involving illegal telephone calls; and inserted (2)(c) establishing a penalty for third or subsequent conviction involving illegal telephone calls.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

Threat defined, 45-2-101.

Control of telephone communication to and from a person holding hostages — nonliability of telephone company officials, 69-6-104.

45-8-214. Bribery in contests. (1) A person commits the offense of bribery in contests if he purposely or knowingly offers, confers, or agrees to confer upon another or solicits, accepts, or agrees to accept from another:

(a) any pecuniary benefit as a consideration for the recipient's failure to use his best efforts in connection with any professional or amateur athletic contest, sporting event, or exhibition; or

(b) any benefit as consideration for a violation of a known duty as a person participating in, officiating, or connected with any professional or amateur athletic contest, sporting event, or exhibition.

(2) A person convicted of the offense of bribery in contests shall be fined not to exceed $5,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

History: En. 94-8-112 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-8-112.

Cross-References

Benefit defined, 45-2-101.

Knowingly defined, 45-2-101.

Pecuniary defined, 45-2-101.

Purposely defined, 45-2-101.

Criminal responsibility of corporations, 45-2-311.

45-8-215. Desecration of flags. (1) In this section "flag" means anything which is or purports to be the official flag of the United States, the United States shield, the United States coat of arms, the Montana state flag, or a copy, picture, or representation of any of them.

(2) A person commits the offense of desecration of flags if he purposely or knowingly:

(a) publicly mutilates, defiles, or casts contempt upon the flag;

(b) places on or attaches to the flag any work, mark, design, or advertisement not properly a part of such flag or exposes to public view a flag so altered;

(c) manufactures or exposes to public view an article of merchandise or a wrapper or receptacle for merchandise upon which the flag is depicted; or

(d) uses the flag for commercial advertising purposes.

(3) A person convicted of the offense of desecration of flags shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed $50,000, or both.

(4) This section does not apply to flags depicted on written or printed documents or periodicals or on stationery, ornaments, pictures, or jewelry, provided there are not unauthorized words or designs on such flags and provided the flag is not connected with any advertisement.

History: En. 94-7-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-7-502; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Knowingly defined, 45-2-101.

Purposely defined, 45-2-101.

45-8-216. Unlawful automated telephone solicitation — exceptions — penalties. (1) A person may not use an automated telephone system, device, or facsimile machine for the selection and dialing of telephone numbers and playing of recorded messages if a message is completed to the dialed number for the purpose of:

(a) offering goods or services for sale;

(b) conveying information on goods or services in soliciting sales or purchases;

(c) soliciting information;

(d) gathering data or statistics; or

(e) promoting a political campaign or any use related to a political campaign.

(2) This section does not prohibit the use of an automated telephone system, device, or facsimile machine described under subsection (1) for purposes of informing purchasers of the receipt, availability for delivery, delay in delivery, or other pertinent information on the status of any purchased goods or services, of responding to an inquiry initiated by any person, or of providing any other pertinent information when there is a preexisting business relationship. This section does not prohibit the use of an automated telephone system or device if the permission of the called party is obtained by a live operator before the recorded message is delivered.

(3) A person violating subsection (1) is subject to a fine of not more than $2,500.

History: En. Sec. 1, Ch. 230, L. 1991.

Part 3

Weapons

45-8-301. Uniformity of interpretation. Sections 45-8-302 through 45-8-309 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

History: En. Sec. 11, Ch. 43, L. 1935; re-en. Sec. 11317.10, R.C.M. 1935; Sec. 94-3110, R.C.M. 1947; redes. 94-8-209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-209.

45-8-302. Definitions. In 45-8-303 through 45-8-309 the following definitions apply:

(1) "Machine gun" means a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semiautomatically discharged from a magazine by a single function of the firing device.

(2) "Crime of violence" means any of the following crimes or an attempt to commit any of the same: any forcible felony, robbery, burglary, and criminal trespass.

(3) "Person" includes a firm, partnership, association, or corporation.

History: En. Sec. 1, Ch. 43, L. 1935; re-en. Sec. 11317.1, R.C.M. 1935; Sec. 94-3101, R.C.M. 1947; redes. 94-8-201 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 34, Ch. 359, L. 1977; R.C.M. 1947, 94-8-201.

Cross-References

Forcible felony defined, 45-2-101.
Person defined, 45-2-101.
Weapon defined, 45-2-101.
Robbery, 45-5-401.
Criminal trespass, 45-6-202, 45-6-203.
Burglary, 45-6-204.

45-8-303. Possession or use of machine gun in connection with a crime. Possession or use of a machine gun in the perpetration or attempted perpetration of a crime of violence is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 20 years.

History: En. Sec. 2, Ch. 43, L. 1935; re-en. 11317.2, R.C.M. 1935; Sec. 94-3102, R.C.M. 1947; redes. 94-8-202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-202.

Cross-References

Possession defined, 45-2-101.
Attempt, 45-4-103.
Aggravated assault, 45-5-202.

45-8-304. Possession or use of machine gun for offensive purpose. Possession or use of a machine gun for offensive or aggressive purpose is hereby declared to be a crime punishable by imprisonment in the state penitentiary for a term of not less than 10 years.

History: En. Sec. 3, Ch. 43, L. 1935; re-en. Sec. 11317.3, R.C.M. 1935; Sec. 94-3103, R.C.M. 1947; redes. 94-8-203 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-203.

Cross-References

Possession defined, 45-2-101.

45-8-305. Presumption of offensive or aggressive purpose. Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(1) when the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, in the United States of America or its territories or insular possessions;

(3) when the machine gun is of the kind described in 45-8-309 and has not been registered as required in that section; or

(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of being used in the machine gun are found in the immediate vicinity thereof.

History: En. Sec. 4, Ch. 43, L. 1935; re-en. Sec. 11317.4, R.C.M. 1935; Sec. 94-3104, R.C.M. 1947; amd. and redes. 94-8-204 by Sec. 26, Ch. 513, L. 1973; amd. Sec. 35, Ch. 359, L. 1977; R.C.M. 1947, 94-8-204.

Cross-References

Conviction defined, 45-2-101.
Possession defined, 45-2-101.
Premises defined, 45-2-101.
Possession or use of a machine gun for offensive or aggressive purpose, 45-8-304.

45-8-306. Presence of gun as evidence of possession or use. The presence of a machine gun in any room, boat, or vehicle shall be evidence of the possession or use of the machine gun by each person occupying the room, boat, or vehicle where the weapon is found.

History: En. Sec. 5, Ch. 43, L. 1935; re-en. Sec. 11317.5, R.C.M. 1935; Sec. 94-3105, R.C.M. 1947; redes. 94-8-205 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-205.

Cross-References

Vehicle defined, 45-2-101.

Weapon defined, 45-2-101.

Presumption of offensive or aggressive purpose, 45-8-305.

45-8-307. Exceptions. Nothing contained in 45-8-301 through 45-8-309 shall prohibit or interfere with:

(1) the manufacture of machine guns for and sale of machine guns to the military forces or the peace officers of the United States or of any political subdivision thereof or the transportation required for that purpose;

(2) the possession of a machine gun for scientific purpose or the possession of a machine gun not usable as a weapon and possessed as a curiosity, ornament, or keepsake;

(3) the possession of a machine gun other than one adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber for a purpose manifestly not aggressive or offensive.

History: En. Sec. 6, Ch. 43, L. 1935; re-en. Sec. 11317.6, R.C.M. 1935; Sec. 94-3106, R.C.M. 1947; redes. 94-8-206 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-206.

Cross-References

Possession defined, 45-2-101.

45-8-308. Manufacturer's register of machine guns. (1) Every manufacturer shall keep a register of all machine guns manufactured or handled by him.

(2) This register shall show, for every machine gun:

(a) the model and serial number;

(b) the date of manufacture, sale, loan, gift, delivery, or receipt;

(c) the name, address, and occupation of the person to whom the machine gun was sold, loaned, given, or delivered or from whom it was received; and

(d) the purpose for which it was acquired by the person to whom the machine gun was sold, loaned, given, or delivered or from whom received.

(3) Upon demand every manufacturer shall permit any marshal, sheriff, or police officer to inspect his entire stock of machine guns, parts, and supplies therefor and shall produce the register herein required for inspection.

(4) A violation of any provision of this section shall be punishable by a fine of not less than $100.

History: En. Sec. 7, Ch. 43, L. 1935; re-en. Sec. 11317.7, R.C.M. 1935; Sec. 94-3107, R.C.M. 1947; redes. 94-8-207 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-207.

Cross-References

Purchase of rifle or shotgun in contiguous state by Montana resident, 45-8-341.

Purchase of rifle or shotgun in Montana by resident of contiguous state, 45-8-342.

45-8-309. Registration of machine guns — presumption from failure to register. (1) Every machine gun now in this state adapted to use pistol cartridges of 30 (.30 in. or 7.63 mm.) or larger caliber shall be registered with the department of justice annually on February 20. If acquired hereafter it shall be registered within 24 hours after its acquisition.

(2) Blanks for registration shall be prepared by the department and furnished upon application.

(3) To comply with this section the application as filed must show the model and serial number of the gun, the name, address, and occupation of the person in possession, and from whom and the purpose for which the gun was acquired.

(4) The registration data shall not be subject to inspection by the public.

(5) Any person failing to register any gun as required by this section shall be presumed to possess the same for offensive or aggressive purpose.

History: En. Sec. 8, Ch. 43, L. 1935; re-en. Sec. 11317.8, R.C.M. 1935; Sec. 94-3108, R.C.M. 1947; redes. 94-8-208 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-208.

Cross-References

Presumption of offensive or aggressive purpose, 45-8-305.

45-8-310 through 45-8-314 reserved.

45-8-315. Definition. "Concealed weapon" means any weapon mentioned in 45-8-316 through 45-8-318 and 45-8-321 through 45-8-328 that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon, except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon.

History: En. Sec. 6, Ch. 74, L. 1919; re-en. Sec. 11307, R.C.M. 1921; re-en. Sec. 11307, R.C.M. 1935; Sec. 94-3530, R.C.M. 1947; redes. 94-8-215 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-215; amd. Sec. 9, Ch. 759, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning, after "through", substituted "45-8-318 and 45-8-321 through 45-8-328 that is" for "45-8-319 which shall be" and after "the weapon" inserted "except that for purposes of 45-8-321 through 45-8-328, concealed weapon means a handgun or a knife with a blade 4 or more inches in length that is wholly or partially covered by the clothing or wearing apparel of the person carrying or bearing the weapon"; and made minor changes in style.

Cross-References

Weapon defined, 45-2-101.

45-8-316. Carrying concealed weapons. (1) Every person who carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife having a blade 4 inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his person any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both.

History: **En. Sec. 1, Ch. 74, L. 1919; re-en. Sec. 11302, R.C.M. 1921; re-en. Sec. 11302, R.C.M. 1935; Sec. 94-3525, R.C.M. 1947; redes. 94-8-210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 36, Ch. 359, L. 1977; amd. Sec. 1, Ch. 411, L. 1977; R.C.M. 1947, 94-8-210.**

Cross-References

Offense defined, 45-2-101.

Concealed weapon defined, 45-8-315.

45-8-317. Exceptions. Section 45-8-316 and, except for a person referred to in subsection (7), 45-8-328 do not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of any of the persons named in subsections (1) through (3);

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a probation and parole officer authorized to carry a firearm under 46-23-1002;

(7) a person issued a permit under 45-8-321;

(8) an agent of the department of justice or a criminal investigator in a county attorney's office;

(9) a person who is outside the official boundaries of a city or town or the confines of a logging, lumbering, mining, or railroad camp or who is lawfully engaged in hunting, fishing, trapping, camping, hiking, backpacking, farming, ranching, or other outdoor activity in which weapons are often carried for recreation or protection; or

(10) the carrying of arms on one's own premises or at one's home or place of business.

History: **En. Sec. 3, Ch. 74, L. 1919; re-en. Sec. 11304, R.C.M. 1921; re-en. Sec. 11304, R.C.M. 1935; Sec. 94-3527, R.C.M. 1947; amd. Sec. 1, Ch. 63, L. 1969; amd. Sec. 1, Ch. 54, L. 1971; redes. 94-8-212 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 37, Ch. 359, L. 1977; R.C.M. 1947, 94-8-212; amd. Sec. 2, Ch. 639, L. 1989; amd. Sec. 10, Ch. 759, L. 1991.**

Compiler's Comments

1991 Amendment: In introductory clause inserted exception referring to subsection (7) and reference to 45-8-328; in (7) substituted "issued a permit under 45-8-321" for "authorized by a judge of a district court of this state to carry a weapon"; inserted (8) providing an exception to offense of carrying concealed weapon in prohibited place for agent of Department of Justice or criminal investigator in County Attorney's office; inserted (9) providing exception to offense of carrying concealed weapon in prohibited place for person outside official boundaries of city or town or confines of logging, lumbering, mining, or railroad camp or for persons lawfully engaged in certain outdoor activities in which weapons are often carried for recreation or protection; and made minor changes in style.

45-8-318. Possession of deadly weapon by prisoner. (1) Every prisoner committed to the Montana state prison or incarcerated in a county jail, city jail, or regional jail who, while at the state prison or a jail, while being conveyed to or from the Montana state prison or a jail, while at a state prison farm or ranch, while being conveyed to or from any such place, or while under the custody of prison or jail officials, officers, or employees, purposely or knowingly possesses or carries upon his person or has under his custody or control without lawful authority a dirk, dagger, pistol, revolver, slingshot, sword cane, billy, knuckles made of any metal or hard substance, knife, razor not including a safety razor, or other deadly weapon is guilty of a felony.

(2) He shall be punished by imprisonment in the state prison for a term not less than 5 years or more than 15 years, such term of imprisonment to commence from the time he would otherwise have been released from jail or prison, or shall be punished by a fine of not more than $50,000, or by both such fine and imprisonment.

History: En. Sec. 1, Ch. 131, L. 1961; Sec. 94-3527.1, R.C.M. 1947; redes. 94-8-213 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-213; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 424, L. 1987.

Cross-References

Felony defined, 45-2-101.

Aggravated kidnapping, 45-5-303.

Transferring illegal or unauthorized communication, 45-7-307.

45-8-319. Repealed. Sec. 14, Ch. 759, L. 1991.

History: En. Sec. 5, Ch. 74, L. 1919; re-en. Sec. 11306, R.C.M. 1921; re-en. Sec. 11306, R.C.M. 1935; Sec. 94-3529, R.C.M. 1947; redes. 94-8-214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 38, Ch. 359, L. 1977; R.C.M. 1947, 94-8-214; amd. Sec. 3, Ch. 221, L. 1989.

45-8-320. Repealed. Sec. 1, Ch. 312, L. 1979.

History: En. Sec. 8, Ch. 74, L. 1919; re-en. Sec. 11309, R.C.M. 1921; re-en. Sec. 11309, R.C.M. 1935; Sec. 94-3532, R.C.M. 1947; redes. 94-8-217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-217.

45-8-321. Permit to carry concealed weapon. (1) A county sheriff shall, within 60 days after the filing of an application, issue a permit to carry a concealed weapon to the applicant. The permit is valid for 4 years from the date of issuance. An applicant must be a United States citizen 18 years of age or older who holds a valid Montana driver's license or other form of identification issued by the state that has a picture of the person identified. An applicant must have been a resident of the state for at least 6 months. Except as provided in subsection (2), this privilege may not be denied an applicant unless the applicant:

(a) is ineligible under Montana or federal law to own, possess, or receive a firearm;

(b) has been charged and is awaiting judgment in any state of a state or federal crime that is punishable by incarceration for 1 year or more;

(c) has been convicted in any state or federal court in any state of a crime punishable by more than 1 year of incarceration or, regardless of the sentence that may be imposed, a crime that includes as an element of the crime an act, attempted act, or threat of intentional homicide, violence, bodily or serious bodily harm, unlawful restraint, sexual abuse, or sexual intercourse or contact without consent;

(d) has been convicted under 45-8-327 or 45-8-328, unless he has been pardoned or 5 years have elapsed since the date of the conviction;

(e) has a warrant of any state or the federal government out for his arrest;

(f) has been adjudicated in a criminal or civil proceeding in a court of any state or in a federal court to be an unlawful user of an intoxicating substance and is under a court order of imprisonment or other incarceration, probation, suspended or deferred imposition of sentence, treatment or education, or other conditions of release or is otherwise under state supervision;

(g) has been adjudicated in a criminal or civil proceeding in a court of any state or in a federal court to be mentally ill, mentally defective, or mentally disabled and is still subject to a disposition order of that court; or

(h) was dishonorably discharged from the United States armed forces.

(2) The sheriff may deny an applicant a permit to carry a concealed weapon if the sheriff has reasonable cause to believe that the applicant is mentally ill, mentally defective, or mentally disabled or otherwise may be a threat to the peace and good order of the community to the extent that the applicant should not be allowed to carry a concealed weapon.

(3) An applicant for a permit under this section must, as a condition to issuance of the permit, be required by the sheriff to demonstrate familiarity with a firearm by:

(a) completion of a hunter education or safety course approved or conducted by the department of fish, wildlife, and parks or a similar agency of another state;

(b) completion of a firearms safety or training course approved or conducted by the department of fish, wildlife, and parks, a similar agency of another state, a national firearms association, a law enforcement agency, an institution of higher education, or an organization that uses instructors certified by a national firearms association;

(c) completion of a law enforcement firearms safety or training course offered to or required of public or private law enforcement personnel and conducted or approved by a law enforcement agency; or

(d) possession of a license from another state to carry a firearm, concealed or otherwise, that is granted by that state upon completion of a course described in subsections (3)(a) through (3)(c).

(4) A photocopy of a certificate of completion of a course described in subsection (3), an affidavit from the entity or instructor that conducted the course attesting to completion of the course, or a copy of any other document that attests to completion of the course and can be verified through contact with the entity or instructor that conducted the course creates a presumption that the applicant has completed a course described in subsection (3).

History: En. Sec. 1, Ch. 759, L. 1991.

45-8-322. Application, renewal, permit, and fees. (1) The application form must be readily available at the sheriff's office and must read as follows:

CONCEALED WEAPON PERMIT APPLICATION

To be completed by each person making application:

RESIDENT OF MONTANA AT LEAST 6 MONTHS ( ) Yes ( ) No
CITIZEN OF THE UNITED STATES ( ) Yes ( ) No
18 YEARS OF AGE OR OLDER ( ) Yes ( ) No

PLEASE TYPE OR PRINT

Full name: ....
Last First Middle

Alias/Maiden/Nickname: ....

Address: Home: .... Zip ....

Employer: .... Zip ....

Phone: ..../....................../......................
Home Employer Message

Place of birth: .... Date of birth: ....

Driver's license #: .... Issuing state: ....

Social Security #: ....

Sex .... Ht. .... Wt. .... Eyes .... Hair ....

LIST EACH FORMER EMPLOYER OR BUSINESS ENGAGED IN FOR THE LAST 5 YEARS:

	Employer or business name	Address	Dates of employment
1.	....	....	....
2.	....	....	....
3.	....	....	....
4.	....	....	....
5.	....	....	....
6.	....	....	....

LIST EACH PLACE IN WHICH YOU HAVE LIVED FOR THE LAST 5 YEARS:

	City	State	Dates of residence
1.	....	....	....
2.	....	....	....
3.	....	....	....
4.	....	....	....
5.	....	....	....
6.	....	....	....

MILITARY SERVICE, BRANCH .... FROM ...... TO ......

TYPE OF DISCHARGE .... RANK UPON DISCHARGE ....

HAVE YOU EVER BEEN ARRESTED FOR OR CONVICTED OF A CRIME OR FOUND GUILTY IN A COURT-MARTIAL PROCEEDING?
( ) YES ( ) NO

IF YES, COMPLETE THE FOLLOWING (Exceptions: minor traffic violations) (Attach additional sheet if necessary):

	City	State	Charge	Date
1.	....	....	....	....
2.	....	....	....	....
3.	....	....	....	....
4.	....	....	....	....
5.	....	....	....	....

LIST THREE PERSONS WHOM YOU HAVE KNOWN FOR AT LEAST 5 YEARS THAT WILL BE CREDIBLE WITNESSES TO YOUR GOOD MORAL CHARACTER AND PEACEABLE DISPOSITION (DO NOT include relatives or present/past employers):

	Name	Address	Phone
1.	....	....	....
2.	....	....	....
3.	....	....	....

IN COMPLETE DETAIL, PLEASE EXPLAIN YOUR REASONS FOR REQUESTING THIS PERMIT (Attach additional sheet if necessary):

....
....
....
....
....
....

I, the undersigned applicant, swear that the foregoing information is true and correct to the best of my knowledge and belief and is given with the full knowledge that any misstatement contained herein may be sufficient cause for denial or revocation of a permit to carry a concealed weapon. I hereby authorize any person having information concerning me that relates to the information requested by this application and the requirements for a concealed weapon permit, either public record or otherwise, to furnish it to the sheriff to whom this application is made.

....
Signature

....
Date of application

This application must be
signed in the presence of
the sheriff or his designee.

(2) The application must be in triplicate. The applicant must be given the original at the time the completed application is filed with the sheriff, the sheriff shall keep a copy for at least 4 years, and a copy must, within 7 days of the sheriff's receipt of the application, be mailed to the chief of police if the applicant resides in a city or town with a police force.

(3) The fee for issuance of a permit is $50. The permit must be renewed for additional 4-year periods upon payment of a $25 fee per renewal and upon request for renewal made within 90 days before expiration of the permit. The permit and each renewal must be in triplicate, in a form prescribed by the department of justice, and must at a minimum include the name, address, physical description, signature, driver's license or state identification card number, and a picture of the permittee. The permit must state that federal and state laws on possession of firearms and other weapons differ and that a person who violates the federal law may be prosecuted in federal court and the Montana permit will not be a defense. The permittee must be given the original, and the sheriff shall keep a copy and send a copy to the department of justice, which shall keep a central repository record of all permits. Replacement of a lost permit must be treated as a renewal under this subsection.

(4) The sheriff shall conduct a criminal record and background check of an applicant, may require an applicant to submit his fingerprints, and may charge the applicant $5 for fingerprinting.

(5) Permit, background, and fingerprinting fees may be retained by the sheriff and used to implement 45-8-321 through 45-8-325.

(6) A state or local government law enforcement agency or other agency or any of its officers or employees may not request a permittee to voluntarily submit information in addition to that required on an application and permit.

History: En. Sec. 2, Ch. 759, L. 1991.

45-8-323. Denial of renewal — revocation of permit. A permit to carry a concealed weapon may be revoked or its renewal denied by the sheriff of the county in which the permittee resides if circumstances arise that would require the sheriff to refuse to grant the permittee an original license.

History: En. Sec. 3, Ch. 759, L. 1991.

45-8-324. Appeal. The denial or revocation of a permit to carry a concealed weapon or refusal of a renewal is subject to appeal to the district court and from that court to the Montana supreme court.

History: En. Sec. 4, Ch. 759, L. 1991.

45-8-325. Permittee change of county of residence — notification to sheriffs and chief of police. A person with a permit to carry a concealed weapon who changes his county of residence shall within 10 days of the change inform the sheriffs of both the old and new counties of residence of his change of residence and that he holds the permit. If his residence changes either from or to a city or town with a police force, he shall also inform the chief of police in each of those cities or towns that has a police force.

History: En. Sec. 5, Ch. 759, L. 1991.

45-8-326. Immunity from liability. A sheriff, employee of a sheriff's office, or county is not liable for damages in a civil action by a person or entity claiming death, personal injury, or property damage arising from alleged wrongful or improper grant of, renewal of, or failure to revoke a permit to carry a concealed weapon, except for actions that constitute willful misconduct or gross negligence.

History: En. Sec. 6, Ch. 759, L. 1991.

45-8-327. Carrying a concealed weapon while under the influence. A person commits the offense of carrying a concealed weapon while under the influence if he purposely or knowingly carries a concealed weapon while under the influence of an intoxicating substance. It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

History: En. Sec. 7, Ch. 759, L. 1991.

45-8-328. Carrying concealed weapon in a prohibited place. (1) A person commits the offense of carrying a concealed weapon in a prohibited place if he purposely or knowingly carries a concealed weapon in:

(a) a building owned or leased by the federal, state, or local government;

(b) a bank, credit union, savings and loan institution, or similar institution; or

(c) a room in which alcoholic beverages are sold, dispensed, and consumed under a license issued under Title 16 for the sale of alcoholic beverages for consumption on the premises.

(2) It is not a defense that the person had a valid permit to carry a concealed weapon. A person convicted of the offense shall be imprisoned in the county jail for a term not to exceed 6 months or fined an amount not to exceed $500, or both.

History: En. Sec. 8, Ch. 759, L. 1991.

Cross-References

Offense defined, 45-2-101.

45-8-329 and 45-8-330 reserved.

45-8-331. Switchblade knives. (1) Every person who carries or bears upon his person, who carries or bears within or on any motor vehicle or other means of conveyance owned or operated by him, or who owns, possesses, uses, stores, gives away, sells, or offers for sale a switchblade knife shall be punished by a fine not exceeding $500 or by imprisonment in the county jail for a period not exceeding 6 months or by both such fine and imprisonment.

(2) A bona fide collector whose collection is registered with the sheriff of the county in which said collection is located is hereby exempted from the provisions of this section.

(3) For the purpose of this section a switchblade knife is defined as any knife which has a blade 1 1/2 inches long or longer which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife.

History: En. Sec. 1, Ch. 243, L. 1957; Sec. 94-35-273, R.C.M. 1947; redes. 94-8-226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-226.

Cross-References

Person defined, 45-2-101.

Vehicle defined, 45-2-101.

45-8-332. Definitions. (1) "Destructive device", as used in this chapter, includes but is not limited to the following weapons:

(a) a projectile containing an explosive or incendiary material or any other similar chemical substance, including but not limited to that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) a bomb, grenade, explosive missile, or similar device or a launching device therefor;

(c) a weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) a rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch or a launching device therefor and a rocket, rocket-propelled projectile, or similar device containing an explosive or incendiary material or any other similar chemical substance other than the propellant for the device, except devices designed primarily for emergency or distress signaling purposes;

(e) a breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and which has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, means any explosive defined in rules adopted by the department of justice pursuant to 50-3-102(3).

History: En. Sec. 1, Ch. 304, L. 1971; Sec. 69-1931, R.C.M. 1947; amd. and redes. 94-8-209.1 by Sec. 72, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.1; amd. Sec. 1, Ch. 187, L. 1985; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

Weapon defined, 45-2-101.

Reckless or malicious use of explosives, 45-8-333.

Possession of a destructive device, 45-8-334.

Possession of explosives, 45-8-335.

Additional sentence for use of destructive device, 46-18-221.

45-8-333. Reckless or malicious use of explosives. Every person who shall recklessly or maliciously use, handle, or have in his or her possession any blasting powder, giant or Hercules powder, giant caps, or other highly explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a misdemeanor.

History: En. Sec. 713, Pen. C. 1895; re-en. Sec. 8551, Rev. C. 1907; re-en. Sec. 2812, R.C.M. 1921; re-en. Sec. 2812, R.C.M. 1935; R.C.M. 1947, 69-1927.

Cross-References

Regulation of construction blasting, Title 37, ch. 72.

Misdemeanor defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Definitions, 45-8-332.

Possession of a destructive device, 45-8-334.

Possession of explosives, 45-8-335.

When no penalty is specified, 46-18-212.

Action in response to complaints related to use of explosives in mining, 82-4-356.

45-8-334. Possession of a destructive device. (1) A person who, with the purpose to commit a felony, has in his possession any destructive device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of the offense of possession of a destructive device.

(2) A person convicted of the offense of possession of a destructive device shall be imprisoned in the state prison for a period of not more than 10 years or be fined an amount of not more than $50,000, or both.

History: En. Sec. 2, Ch. 304, L. 1971; Sec. 69-1932, R.C.M. 1947; amd. and redes. 94-8-209.2 by Sec. 73, Ch. 359, L. 1977; R.C.M 1947, 94-8-209.2; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Regulation of construction blasting, Title 37, ch. 72.

Felony defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Purpose defined, 45-2-101.

Destructive device defined, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of explosives, 45-8-335.

Possession prima facie evidence of unlawful purpose, 45-8-337.

Administrative rules governing use of explosives — Department of Justice, 50-3-102.

45-8-335. Possession of explosives. (1) A person commits the offense of possession of explosives if he possesses, manufactures, transports, buys, or sells an explosive compound, flammable material, or timing, detonating, or similar device for use with an explosive compound or incendiary device and:

(a) has the purpose to use such explosive, material, or device to commit an offense; or

(b) knows that another has the purpose to use such explosive, material, or device to commit an offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed 20 years or be fined an amount not to exceed $50,000, or both.

History: En. 94-6-105 by Sec. 1, Ch. 513, L. 1973; Sec. 94-6-105, R.C.M. 1947; amd. and redes. 94-8-209.3 by Sec. 74, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.3; amd. Sec. 7, Ch. 198, L. 1981.

Cross-References

Regulation of construction blasting, Title 37, ch. 72.

Knowingly defined, 45-2-101.

Offense defined, 45-2-101.

Person defined, 45-2-101.

Possession defined, 45-2-101.

Purposely defined, 45-2-101.

When accountability exists, 45-2-302.

Definitions, 45-8-332.

Reckless or malicious use of explosives, 45-8-333.

Possession of a destructive device, 45-8-334.

Possession prima facie evidence of unlawful purpose, 45-8-337.

Administrative rules governing use of explosives — Department of Justice, 50-3-102.

45-8-336. Possession of a silencer. (1) A person commits the offense of possession of a silencer if he possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 30 years or a fine of not less than $1,000 or more than $20,000 or by both such fine and imprisonment.

History: En. 94-8-209.4 by Sec. 75, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.4.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Person defined, 45-2-101.
Possession defined, 45-2-101.
Purposely defined, 45-2-101.
Possession prima facie evidence of unlawful purpose, 45-8-337.

45-8-337. Possession prima facie evidence of unlawful purpose. Possession of a silencer or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense.

History: En. 94-8-209.5 by Sec. 76, Ch. 359, L. 1977; R.C.M. 1947, 94-8-209.5.

Cross-References

Offense defined, 45-2-101.
Possession defined, 45-2-101.
Purpose defined, 45-2-101.
Definitions, 45-8-332.
Reckless or malicious use of explosives, 45-8-333.
Possession of a destructive device, 45-8-334.
Possession of explosives, 45-8-335.

45-8-338 reserved.

45-8-339. Carrying firearms on train — penalty. (1) Except as authorized by the management of a railroad, it is unlawful for a person not authorized to carry a weapon in the course of his official duties to knowingly or purposely carry or transport firearms on a train in this state unless, prior to boarding, the person has delivered all firearms and ammunition, if any, to the operator of the train.

(2) A person violating this section shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a period not exceeding 6 months, or both.

History: En. Sec. 1, Ch. 601, L. 1991.

45-8-340. Sawed-off firearm — penalty. (1) A person commits the offense of possession of a sawed-off firearm if he knowingly possesses a rifle or shotgun that when originally manufactured had a barrel length of:

(a) 16 inches or more and an overall length of 26 inches or more in the case of a rifle; or

(b) 18 inches or more and an overall length of 26 inches or more in the case of a shotgun; and

(c) the firearm has been modified in a manner so that the barrel length, overall length, or both, are less than specified in subsection (1)(a) or (1)(b).

(2) The barrel length is the distance from the muzzle to the rear-most point of the chamber.

(3) This section does not apply to firearms possessed:

(a) by a peace officer of this state or one of its political subdivisions;

(b) by an officer of the United States government authorized to carry weapons;

(c) by a person in actual service as a national guardsman;

(d) by a person called to the aid of one of the persons named in subsections (3)(a) through (3)(c);

(e) for educational or scientific purposes in which the firearms are incapable of being fired;

(f) by a person who has a valid federal tax stamp for the firearm, issued by the bureau of alcohol, tobacco, and firearms; or

(g) by a bona fide collector of firearms if the firearm is a muzzleloading, sawed-off firearm manufactured before 1900.

(4) A person convicted of the offense of possession of a sawed-off firearm must be fined not less than $200 or more than $500 or imprisoned in the county jail for not less than 5 days or more than 6 months, or both, upon a first conviction. If a person has one or more prior convictions under this section or one or more prior felony convictions under a law of this state, another state, or the United States, he must be fined an amount not to exceed $1,000 or imprisoned in the state prison for a term not to exceed 5 years, or both.

History: En. Sec. 1, Ch. 334, L. 1989.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Person defined, 45-2-101.
Possession defined, 45-2-101.

45-8-341. Purchase of rifle or shotgun in contiguous state by Montana resident. Residents of Montana may purchase any rifle or rifles and shotgun or shotguns in a state contiguous to Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which the purchase is made.

History: En. Sec. 1, Ch. 87, L. 1969; Sec. 94-3578.1, R.C.M. 1947; redes. 94-8-219 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-219.

45-8-342. Purchase of rifle or shotgun in Montana by resident of contiguous state. Residents of a state contiguous to Montana may purchase any rifle or rifles and shotgun or shotguns in Montana, provided that such residents conform to the applicable provisions of the federal Gun Control Act of 1968 and regulations thereunder, as administered by the United States secretary of the treasury, and provided further that such residents conform to the provisions of law applicable to such purchase in Montana and in the state in which such persons reside.

History: En. Sec. 2, Ch. 87, L. 1969; Sec. 94-3578.2, R.C.M. 1947; redes. 94-8-220 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-220.

45-8-343. Firing firearms. (1) Except as provided in subsections (2) and (3), every person who willfully shoots or fires off a gun, pistol, or any other firearm within the limits of any town or city or of any private enclosure which contains a dwelling house is punishable by a fine not exceeding $25 or such greater fine or a term of imprisonment, or both, as the town or city may impose.

(2) Firearms may be discharged at an indoor or outdoor rifle, pistol, or shotgun shooting range located within the limits of a town or city or in a private dwelling if the shooting range is approved by the local governing body.

(3) Subsection (1) does not apply if the discharge of a firearm is justifiable under Title 45, chapter 3, part 1.

History: En. Secs. 1, 2, p. 46, Ex. L. 1873; re-en. Sec. 185, 4th Div. Rev. Stat. 1879; re-en. Sec. 228, 4th Div. Comp. Stat. 1887; amd. Sec. 1161, Pen. C. 1895; re-en. Sec. 8834, Rev. C. 1907; re-en. Sec. 11530, R.C.M. 1921; re-en. Sec. 11530, R.C.M. 1935; Sec. 94-3578, R.C.M. 1947; redes. 94-8-218 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 39, Ch. 359, L. 1977; R.C.M. 1947, 94-8-218; amd. Sec. 1, Ch. 20, L. 1981; amd. Sec. 1, Ch. 618, L. 1983.

Cross-References

Excessive fines and cruel and unusual punishments prohibited, Art. II, sec. 22, Mont. Const.

Local government with self-government powers — limit on fixing misdemeanor penalty, 7-1-111(8).

Disorderly conduct, 45-8-101.

45-8-344. Use of firearms by children under fourteen prohibited. It is unlawful for a parent, guardian, or other person having charge or custody of a minor child under the age of 14 years to permit the minor child to carry or use in public any firearms of any description loaded with powder and lead, except when the child is accompanied by a person having charge or custody of the child or under the supervision of a qualified firearms safety instructor who has been authorized by the parent or guardian.

History: En. Sec. 1, Ch. 111, L. 1907; Sec. 8879, Rev. C. 1907; re-en. Sec. 11565, R.C.M. 1921; re-en. Sec. 11565, R.C.M. 1935; Sec. 94-3579, R.C.M. 1947; amd. Sec. 1, Ch. 139, L. 1963; redes. 94-8-221 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 40, Ch. 359, L. 1977; R.C.M. 1947, 94-8-221.

Cross-References

Criminal liability of parent or guardian — prosecution, 45-8-345.

Safety instruction for resident hunters under 18 years of age, 87-2-105.

45-8-345. Criminal liability of parent or guardian — prosecution. (1) Any parent, guardian, or other person violating the provisions of 45-8-344 shall be guilty of a misdemeanor.

(2) The county attorney, on complaint of any person, must prosecute violations of 45-8-344.

History: En. Sec. 2, Ch. 111, L. 1907; Sec. 8880, Rev. C. 1907; re-en. Sec. 11566, R.C.M. 1921; re-en. Sec. 11566, R.C.M. 1935; Sec. 94-3580, R.C.M. 1947; redes. 94-8-222 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 94-8-222.

Cross-References

When accountability exists, 45-2-302.

When no penalty is specified, 46-18-212.

45-8-346 through 45-8-350 reserved.

45-8-351. Restriction on local government regulation of firearms. (1) Except as provided in subsection (2), no county, city, town, consolidated local government, or other local government unit may prohibit, register, tax, license, or regulate the purchase, sale or other transfer (including delay in purchase, sale, or other transfer), ownership, possession, transportation, use, or unconcealed carrying of any weapon, including a rifle, shotgun, handgun, or concealed handgun.

(2) (a) For public safety purposes, a city or town may regulate the discharge of rifles, shotguns, and handguns. A county, city, town, consolidated local government, or other local government unit has power to prevent and suppress the carrying of concealed or unconcealed weapons to a public assembly, publicly owned building, park under its jurisdiction, or school, and the possession of firearms by convicted felons, adjudicated mental incompetents, illegal aliens, and minors.

(b) Nothing contained herein shall allow any government to prohibit the legitimate display of firearms at shows or other public occasions by collectors and others, nor shall anything contained herein prohibit the legitimate transportation of firearms through any jurisdiction, whether in airports or otherwise.

History: En. Sec. 1, Ch. 589, L. 1985; amd. Sec. 11, Ch. 759, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near end before "rifle", inserted "weapon, including a" and after "handgun" inserted "or concealed handgun"; in (2)(a), after "concealed", substituted "or unconcealed" for "weapons, the carrying of"; and made minor changes in style.

CHAPTER 9

DANGEROUS DRUGS

Part 1 — Offenses Involving Dangerous Drugs

45-9-101. Criminal sale of dangerous drugs.
45-9-102. Criminal possession of dangerous drugs.
45-9-103. Criminal possession with intent to sell.
45-9-104. Fraudulently obtaining dangerous drugs.
45-9-105. Altering labels on dangerous drugs.
45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs.
45-9-107. Criminal possession of precursors to dangerous drugs.
45-9-108. Exemptions.
45-9-109. Criminal sale of dangerous drugs on or near school property — penalty — affirmative defense.
45-9-110 reserved.
45-9-111. Imitation dangerous drugs — definitions.
45-9-112. Criminal sale of imitation dangerous drug — penalty.
45-9-113. Criminal possession of imitation dangerous drug with purpose to sell — penalty.
45-9-114. Criminal advertisement of imitation dangerous drug — penalty.
45-9-115. Criminal manufacture of imitation dangerous drug — penalty.
45-9-116. Imitation dangerous drugs — exemptions — rules.
45-9-117 through 45-9-120 reserved.
45-9-121. Criminal possession of toxic substances — penalty.
45-9-122 through 45-9-124 reserved.
45-9-125. Continuing criminal enterprise — penalty.
45-9-126 reserved.
45-9-127. Carrying dangerous drugs on train — penalty.

Part 2 — Procedural Provisions

45-9-201. Repealed.
45-9-202. Alternative sentencing authority.
45-9-203. Surrender of license.
45-9-204. Immunity from liability.
45-9-205. Exemption from mandatory minimum sentences.

Chapter Cross-References

Controlled substances, Title 50, ch. 32.

Part 1

Offenses Involving Dangerous Drugs

Part Cross-References

Controlled substances, Title 50, ch. 32.

45-9-101. Criminal sale of dangerous drugs. (1) A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away or manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal sale of a narcotic drug, as defined in 50-32-101(18)(d), or an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224, except marijuana or tetrahydrocannabinols, who has a prior conviction for criminal sale of such a drug shall be imprisoned in the state prison for a term of not less than 10 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222. Upon a third or subsequent conviction for criminal sale of such a drug, he shall be imprisoned in the state prison for a term of not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(4) A person convicted of criminal sale of dangerous drugs not otherwise provided for in subsection (2), (3), or (5) shall be imprisoned in the state prison for a term of not less than 1 year or more than life or be fined an amount of not more than $50,000, or both.

(5) A person who was an adult at the time of sale and who is convicted of criminal sale of dangerous drugs to a minor shall be sentenced as follows:

(a) If convicted pursuant to subsection (2), the person shall be imprisoned in the state prison for not less than 4 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(b) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of such a sale, the person shall be imprisoned in the state prison for not less than 20 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(c) If convicted of the sale of a dangerous drug included in Schedule I or Schedule II pursuant to 50-32-222 or 50-32-224 and if previously convicted of two or more such sales, the person shall be imprisoned in the state prison for not less than 40 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(d) If convicted pursuant to subsection (4), the person shall be imprisoned in the state prison for not less than 2 years or more than life and may be fined not more than $50,000, except as provided in 46-18-222.

(6) Practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 4, Ch. 314, L. 1969; amd. Sec. 1, Ch. 55, L. 1973; amd. Sec. 24, Ch. 412, L. 1973; amd. Sec. 1, Ch. 258, L. 1974; amd. Sec. 1, Ch. 359, L. 1977; amd. Sec. 1, Ch. 584, L. 1977; R.C.M. 1947, 54-132; amd. Sec. 1, Ch. 587, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 9, Ch. 583, L. 1981; amd. Sec. 1, Ch. 393, L. 1983; amd. Sec. 16, Ch. 3, L. 1985; amd. Sec. 1, Ch. 478, L. 1987; amd. Sec. 1, Ch. 575, L. 1989.

Cross-References

Criminal jurisdiction of Justices' Courts, 3-10-303.

Offense defined, 45-2-101.

Limitation on deferral or suspension of sentence, 46-18-201.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

Marijuana defined, 50-32-101.

Opiate defined, 50-32-101.

45-9-102. Criminal possession of dangerous drugs. (1) A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in 50-32-101.

(2) A person convicted of criminal possession of marijuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marijuana or 1 gram of hashish is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 and by imprisonment in the county jail for not more than 6 months. The minimum fine must be imposed as a condition of a suspended or deferred sentence. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail for a term not to exceed 1 year or in the state prison for a term not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of an anabolic steroid as listed in 50-32-226 is, for the first offense, guilty of a misdemeanor and shall be punished by a fine of not less than $100 or more than $500 or by imprisonment in the county jail for not more than 6 months, or both.

(4) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years and may be fined not more than $50,000, except as provided in 46-18-222.

(5) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection (2), (3), or (4) shall be imprisoned in the state prison for a term not to exceed 5 years or be fined an amount not to exceed $50,000, or both.

(6) A person of the age of 21 years or under convicted of a first violation under this section is presumed to be entitled to a deferred imposition of sentence of imprisonment.

(7) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 50-32-101, are exempt from this section.

History: En. Sec. 5, Ch. 314, L. 1969; amd. Sec. 1, Ch. 228, L. 1971; amd. Sec. 26, Ch. 412, L. 1973; amd. Sec. 1, Ch. 174, L. 1974; amd. Sec. 2, Ch. 359, L. 1977; amd. Sec. 2, Ch. 584, L. 1977; R.C.M. 1947, 54-133; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 612, L. 1983; amd. Sec. 17, Ch. 3, L. 1985; amd. Sec. 1, Ch. 42, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (3) establishing penalty for possession of anabolic steroids; in (5) inserted reference to subsection (4); and made minor changes in style.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Possession defined, 45-2-101.
Alternative sentencing authority, 45-9-202.
Limitation on deferral or suspension of sentence, 46-18-201.
Dismissal after deferred imposition of sentence, 46-18-204.
Dangerous drug defined, 50-32-101.
Marijuana defined, 50-32-101.
Opiate defined, 50-32-101.

45-9-103. Criminal possession with intent to sell. (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 50-32-101.

(2) A person convicted of criminal possession of an opiate, as defined in 50-32-101(19), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) A person convicted of criminal possession with intent to sell not otherwise provided for in subsection (2) shall be imprisoned in the state prison for a term of not more than 20 years or be fined an amount not to exceed $50,000, or both.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this section.

History: En. 54-133.1 by Sec. 1, Ch. 545, L. 1975; amd. Sec. 3, Ch. 584, L. 1977; R.C.M. 1947, 54-133.1; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 18, Ch. 3, L. 1985; amd. Sec. 1, Ch. 162, L. 1987.

Cross-References

Knowingly defined, 45-2-101.
Offense defined, 45-2-101.
Possession defined, 45-2-101.
Limitation on deferral or suspension of sentence, 46-18-201.
Controlled substances, Title 50, ch. 32.
Dangerous drug defined, 50-32-101.
Marijuana defined, 50-32-101.
Opiate defined, 50-32-101.

45-9-104. Fraudulently obtaining dangerous drugs. A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, as defined in 50-32-101, by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing himself to be a manufacturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other person authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; or

(5) the concealment of a material fact.

History: En. Sec. 6, Ch. 314, L. 1969; amd. Sec. 3, Ch. 359, L. 1977; R.C.M. 1947, 54-134.

Cross-References

Obtain defined, 45-2-101.

Offense defined, 45-2-101.

Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs, 45-9-106.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

45-9-105. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to or otherwise misrepresents a package or receptacle containing a dangerous drug, as defined in 50-32-101.

History: En. Sec. 7, Ch. 314, L. 1969; amd. Sec. 4, Ch. 359, L. 1977; R.C.M. 1947, 54-135.

Cross-References

Offense defined, 45-2-101.

Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs, 45-9-106.

Controlled substances, Title 50, ch. 32.

Dangerous drug defined, 50-32-101.

45-9-106. Penalty for fraudulently obtaining dangerous drugs or altering the labels of dangerous drugs. (1) A person convicted of altering labels on dangerous drugs shall be imprisoned in the county jail for a term not to exceed 6 months.

(2) A person convicted of fraudulently obtaining dangerous drugs included in Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 shall:

(a) upon his first conviction be imprisoned in the state prison for a term of not less than 1 year or not more than 5 years or fined an amount not to exceed $50,000, or both;

(b) upon his second conviction be imprisoned in the state prison for a term of not less than 5 years or not more than 10 years or fined an amount not to exceed $50,000, or both.

History: En. Sec. 8, Ch. 314, L. 1969; R.C.M. 1947, 54-136; amd. Sec. 1, Ch. 389, L. 1981; amd. Sec. 1, Ch. 179, L. 1991.

Compiler's Comments

1991 Amendment: At end of (2)(a) and (2)(b) inserted "or fined an amount not to exceed $50,000, or both".

Cross-References

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

45-9-107. Criminal possession of precursors to dangerous drugs. (1) A person commits the offense of criminal possession of precursors to dangerous drugs if he possesses:

(a) phenyl-2-propanone (phenylacetone) with the intent to manufacture amphetamine or methamphetamine, or both;

(b) both piperidine and cyclohexanone at the same time, or a combination product thereof, with the intent to manufacture phencyclidine (PCP).

(2) A person convicted of criminal possession of precursors to dangerous drugs shall be imprisoned in the state prison for a term not less than 2 years or more than 20 years or be fined an amount not to exceed $50,000, or both.

History: En. Sec. 1, Ch. 291, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 202, L. 1989.

Cross-References
Possession defined, 45-2-101.
Exemptions, 45-9-108.
Dangerous drug defined, 50-32-101.

45-9-108. Exemptions. (1) The provisions of 45-9-107 do not apply to:

(a) a drug manufacturer licensed by the state;

(b) a person authorized by rules adopted by the board of pharmacy to possess the combination of substances;

(c) a person employed by or enrolled as a student in a college or university within the state who possesses any combination of substances listed in 45-9-107 for the purposes of teaching or research which is authorized by the college or university.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the processing of any combination of the substances listed in 45-9-107 whenever it determines that there is a legitimate need and that the substances will be used for a lawful purpose.

History: En. Secs. 2, 3, Ch. 291, L. 1979; amd. Sec. 171, Ch. 575, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.
Criminal possession of precursors to dangerous drugs, 45-9-107.

45-9-109. Criminal sale of dangerous drugs on or near school property — penalty — affirmative defense. (1) A person commits the offense of criminal sale of dangerous drugs on or near school property if he violates 45-9-101 in, on, or within 1,000 feet of the real property comprising a public or private elementary or secondary school.

(2) Except as provided in 46-18-222, a person convicted of criminal sale of dangerous drugs on or near school property:

(a) shall be imprisoned in the state prison for a term of not less than 3 years or more than life; and

(b) may be fined an amount of not more than $50,000.

(3) It is not a defense to prosecution under subsection (1) that the person did not know the distance involved.

(4) It is an affirmative defense to prosecution for a violation of this section that:

(a) the prohibited conduct took place entirely within a private residence; and

(b) no person 17 years of age or younger was present in the private residence at any time during the commission of the offense.

History: En. Sec. 1, Ch. 519, L. 1991.

45-9-110 reserved.

45-9-111. Imitation dangerous drugs — definitions. As used in 45-9-111 through 45-9-116 and 45-9-202, the following definitions apply:

(1) “Dangerous drug” has the meaning given to that term in 50-32-101.

(2) “Imitation dangerous drug” means a substance that is not a dangerous drug but that is expressly or impliedly represented to be a dangerous drug or to simulate the effect of a dangerous drug and the appearance of which,

including the color, shape, size, and markings, would lead a reasonable person to believe that the substance is a dangerous drug.

(3) "Person" includes any individual, business association, partnership, or corporation.

History: En. Sec. 1, Ch. 451, L. 1983; amd. Sec. 19, Ch. 3, L. 1985.

45-9-112. Criminal sale of imitation dangerous drug — penalty. (1) A person commits the offense of criminal sale of an imitation dangerous drug if he knowingly or purposely sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away any imitation dangerous drug.

(2) A person convicted of criminal sale of an imitation dangerous drug to a person 18 years of age or older shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person convicted of criminal sale of an imitation dangerous drug to a person under the age of 18 shall be imprisoned in the state prison for a term of not more than 10 years and may be fined not more than $50,000.

History: En. Sec. 2, Ch. 451, L. 1983.

45-9-113. Criminal possession of imitation dangerous drug with purpose to sell — penalty. (1) A person commits the offense of criminal possession of an imitation dangerous drug with purpose to sell if he possesses with purpose to sell any imitation dangerous drug.

(2) A person convicted of criminal possession of an imitation dangerous drug with purpose to sell shall be imprisoned in the state prison for a term of not more than 5 years and may be fined not more than $50,000.

(3) A person under 18 years of age convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

History: En. Sec. 3, Ch. 451, L. 1983.

45-9-114. Criminal advertisement of imitation dangerous drug — penalty. (1) A person commits the offense of criminal advertisement of an imitation dangerous drug if he knowingly or purposely places in any newspaper, magazine, handbill, or other publication or posts or distributes any advertisement or solicitation to promote the manufacture, sale, exchange, or distribution of an imitation dangerous drug.

(2) A person convicted of criminal advertisement of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 451, L. 1983.

45-9-115. Criminal manufacture of imitation dangerous drug — penalty. (1) A person commits the offense of criminal manufacture of an imitation dangerous drug if he knowingly or purposely manufactures, prepares, or cultivates any imitation dangerous drug.

(2) A person convicted of criminal manufacture of an imitation dangerous drug under this section is punishable by a fine not to exceed $100,000 or by imprisonment in the state prison for a term of not more than 10 years or by both such fine and imprisonment.

History: En. Sec. 5, Ch. 451, L. 1983.

45-9-116. Imitation dangerous drugs — exemptions — rules. (1) Sections 45-9-111 through 45-9-115 do not apply to:

(a) a person authorized by rules adopted by the board of pharmacy to possess with purpose to sell or sell imitation dangerous drugs;

(b) law enforcement personnel selling or possessing with purpose to sell imitation dangerous drugs while acting within the scope of their employment; and

(c) a person registered under the provisions of Title 50, chapter 32, part 3, who sells, or possesses with purpose to sell an imitation dangerous drug for use as a placebo, by that person or any other person so registered, in the course of professional practice or research.

(2) The board of pharmacy shall adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act to authorize the possession with purpose to sell or sale of imitation dangerous drugs whenever it determines that there is a legitimate need and that the drugs will be used for a lawful purpose.

History: En. Sec. 6, Ch. 451, L. 1983; amd. Sec. 1, Ch. 247, L. 1983; amd. Sec. 20, Ch. 3, L. 1985.

45-9-117 through 45-9-120 reserved.

45-9-121. Criminal possession of toxic substances — penalty. (1) A person commits the offense of criminal possession of a toxic substance if he inhales or ingests or possesses with the purpose to inhale or ingest, for the purpose of altering his mental or physical state, any substance with toxic effects that is not manufactured for human consumption or inhalation, including but not limited to glue, fingernail polish, paint and paint thinners, petroleum products, aerosol propellants, and chemical solvents.

(2) The provisions of subsection (1) do not apply to a bona fide institution of higher education conducting research with human volunteers pursuant to guidelines adopted by the institution or any federal or state agency.

(3) A person convicted under this section shall be imprisoned in the county jail for a term not to exceed 6 months or be fined an amount not to exceed $500, or both.

(4) The youth court has jurisdiction of any violation of subsection (1) by a person under 18 years of age.

History: En. Sec. 1, Ch. 482, L. 1983.

45-9-122 through 45-9-124 reserved.

45-9-125. Continuing criminal enterprise — penalty. (1) A person who engages in a continuing criminal enterprise is guilty of a crime and upon conviction is punishable by a term of imprisonment and a fine not exceeding two times those authorized for the underlying offense. For purposes of this subsection, a person is engaged in a continuing criminal enterprise if:

(a) the person violates any provision of this chapter that is a felony; and

(b) the violation is a part of a continuing series of two or more violations of this chapter on separate occasions:

(i) that are undertaken by the person in concert with five or more other persons with respect to whom the person occupies a position of organizer, supervisor, or any other position of management; and

(ii) from which the person obtained substantial income or resources.

(2) A person who violates the provisions of subsection (1) after a previous judgment of conviction under that subsection has become final is punishable by a term of imprisonment not exceeding three times that authorized for the underlying offense.

(3) A sentence for a conviction under this section runs consecutively with the conviction for the underlying offense. Mandatory minimum sentences must be multiplied as provided in this section and may not be waived or suspended.

History: En. Sec. 1, Ch. 113, L. 1991.

45-9-126 reserved.

45-9-127. Carrying dangerous drugs on train — penalty. (1) A person commits the offense of carrying dangerous drugs on a train in this state if he is knowingly or purposely in criminal possession of a dangerous drug and boards any train.

(2) A person convicted of carrying dangerous drugs on a train in this state is subject to the penalties provided in 45-9-102.

History: En. Secs. 2, 3, Ch. 601, L. 1991.

Part 2

Procedural Provisions

45-9-201. Repealed. Sec. 3, Ch. 612, L. 1983.

History: En. Sec. 10, Ch. 314, L. 1969; amd. Sec. 6, Ch. 359, L. 1977; R.C.M. 1947, 54-138.

45-9-202. Alternative sentencing authority. (1) A person convicted of a dangerous drug felony offense under this chapter may, in lieu of imprisonment, be sentenced according to the alternatives provided in subsection (2).

(2) If the court determines, either from the face of the record or from a presentence investigation and report, that incarceration of the defendant is not appropriate, the court may, as a condition of a suspended or deferred sentence, impose one or more of the following alternatives:

(a) imposition of a fine not to exceed the maximum amount provided by statute for those offenses that specify a fine as part of the penalty or $1,000 for those offenses that do not specify a fine;

(b) commitment to a residential drug treatment facility licensed and approved by the state for rehabilitative treatment for not less than the minimum recommended time determined necessary by the facility and not more than 1 year;

(c) mandatory service of not more than 2,000 hours in a community-based drug treatment or drug education program with compliance to be monitored by the probation and parole bureau of the department of corrections and human services based upon information provided by the treatment or education program;

(d) if recommended by the probation and parole bureau, placement in a program of intensive probation that requires, at a minimum, that the defendant comply with all of the following conditions:

(i) maintain employment or full-time student status at an approved school, making progress satisfactory to the probation officer, or be involved in supervised job searches and community service work designated by the probation officer;

(ii) pay probation supervision fees through the clerk of the district court of not less than $50 per month to be deposited in an account in the state special revenue fund to the credit of the department of corrections and human services;

(iii) find a place to reside approved by the probation officer that may not be changed without the officer's approval;

(iv) remain at the residence at all times except to go to work, to attend school, or to perform community service or as otherwise specifically allowed by the probation officer;

(v) remain drug free and submit to drug and alcohol tests administered randomly not less than once each month by or under supervision of the probation officer;

(vi) perform not less than 10 hours of community service each month as approved by the probation officer, except that full-time students may be exempted or required to perform fewer hours of community service;

(vii) enroll or make satisfactory effort to seek enrollment in an approved drug rehabilitation program; and

(viii) comply with any other conditions imposed by the court to meet the needs of the community and the defendant;

(e) suspension or revocation of the defendant's driver's license issued under Title 61, chapter 5, subject to the following terms and conditions:

(i) upon the first conviction of an offense under this chapter, the driver's license must be suspended for 6 months;

(ii) upon the second conviction, the driver's license must be revoked for 1 year;

(iii) upon a third or subsequent conviction, the driver's license must be revoked for 3 years.

History: En. Sec. 9, Ch. 314, L. 1969; amd. Sec. 5, Ch. 359, L. 1977; R.C.M. 1947, 54-137; amd. Sec. 7, Ch. 451, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 802, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted "a dangerous drug felony offense under this chapter" for "criminal possession of dangerous drugs, criminal sale of imitation dangerous drugs, criminal possession of imitation dangerous drugs with purpose to sell, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, as defined in 50-32-101, either from the face of the record or by a presentence investigation" and at end, after "be", substituted "sentenced according to the alternatives provided in subsection (2)" for "committed to the custody of any institution for rehabilitative treatment for not less than 6 months or more than 2 years"; and inserted (2) authorizing the court, if it determines from the record or from the presentence report that incarceration of defendant is not appropriate, to impose alternatives outlined in subsections (2)(a) through (2)(e).

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Criminal possession of dangerous drugs, 45-9-102.

Fraudulently obtaining dangerous drugs, 45-9-104.

Altering labels on dangerous drugs, 45-9-105.

Criminal sale, or possession with purpose to sell, of imitation dangerous drug, 45-9-112, 45-9-113.

45-9-203. Surrender of license. If a court suspends or revokes a driver's license under 45-9-202(2)(e), the defendant shall, at the time of sentencing, surrender the license to the court. The court shall forward the license and a copy of the sentencing order to the department of justice. The defendant may apply to the department for issuance of a probationary license under 61-2-302.

History: En. Sec. 2, Ch. 802, L. 1991.

Cross-References

Alternative sentencing authority, 45-9-202.

45-9-204. Immunity from liability. (1) Except as provided in subsections (2) and (3), if a court imposes mandatory service under 45-9-202(2)(c) or community service under 45-9-202(2)(d), a public or private agency supervising the service, treatment, or education program in which the defendant is participating and the officers, agents, and employees of the public or private agency are immune from liability to the defendant for any acts or omissions alleged to have occurred within the course and scope of supervision.

(2) The immunity provided in subsection (1) does not extend to acts or omissions alleged to constitute gross negligence or intentional acts.

(3) The immunity provided in subsection (1) for a public agency does not extend to claims for workers' compensation benefits when the defendant is injured while performing community service.

History: En. Sec. 3, Ch. 802, L. 1991.

Cross-References

Alternative sentencing authority, 45-9-202.

45-9-205. Exemption from mandatory minimum sentences. If a court imposes any of the sentencing alternatives specified in 45-9-202, the mandatory minimum sentences provided in 46-18-201(4) do not apply.

History: En. Sec. 4, Ch. 802, L. 1991.

Cross-References

Alternative sentencing authority, 45-9-202.

CHAPTER 10

MODEL DRUG PARAPHERNALIA ACT

Part 1 — General Provisions

45-10-101. Definitions.
45-10-102. Determination of what constitutes paraphernalia.
45-10-103. Criminal possession of drug paraphernalia.
45-10-104. Manufacture or delivery of drug paraphernalia.
45-10-105. Delivery of drug paraphernalia to a minor.
45-10-106. Advertisement of drug paraphernalia.
45-10-107. Exemptions.

Part 1

General Provisions

Part Cross-References

Destruction or appropriation of physical evidence in criminal cases, 46-5-306 through 46-5-309.

45-10-101. Definitions. (1) As used in this part, the term "drug paraphernalia" means all equipment, products, and materials of any kind that are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a dangerous drug. It includes but is not limited to:

(a) kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant that is a dangerous drug or from which a dangerous drug can be derived;

(b) kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing dangerous drugs;

(c) isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant that is a dangerous drug;

(d) testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of dangerous drugs;

(e) scales and balances used, intended for use, or designed for use in weighing or measuring dangerous drugs;

(f) dilutents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting dangerous drugs;

(g) separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from or in otherwise cleaning or refining marijuana;

(h) blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding dangerous drugs;

(i) capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of dangerous drugs;

(j) containers and other objects used, intended for use, or designed for use in storing or concealing dangerous drugs;

(k) objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, hashish oil, or other dangerous drug as defined by 50-32-101 into the human body, such as:

(i) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) water pipes;

(iii) carburetion tubes and devices;

(iv) smoking and carburetion masks;

(v) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(vi) miniature cocaine spoons and cocaine vials;

(vii) chamber pipes;

(viii) carburetor pipes;

(ix) electric pipes;

(x) air-driven pipes;

(xi) chillums;

(xii) bongs;

(xiii) ice pipes or chillers.

(2) Words or phrases used in this part that are not defined by this section have the meaning given to them by the definitions contained in 50-32-101 unless the usage clearly indicates a different intent.

History: En. Sec. 1, Ch. 481, L. 1981.

45-10-102. Determination of what constitutes paraphernalia. In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) statements by an owner or by anyone in control of the object concerning its use;

(2) prior convictions, if any, of an owner or of anyone in control of the object, under any state or federal law relating to any controlled substance or dangerous drug;

(3) the proximity of the object, in time and space, to a direct violation of this part;

(4) the proximity of the object to dangerous drugs;

(5) the existence of any residue of dangerous drugs on the object;

(6) direct or circumstantial evidence of the intent of an owner or of anyone in control of the object to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of 45-10-103 through 45-10-106. The innocence of an owner or of anyone in control of the object as to a direct violation of 45-10-103 through 45-10-106 does not prevent a finding that the object is intended for use or designed for use as drug paraphernalia.

(7) instructions, oral or written, provided with the object concerning its use;

(8) descriptive materials accompanying the object which explain or depict its use;

(9) national and local advertising concerning its use;

(10) the manner in which the object is displayed for sale;

(11) whether the owner or anyone in control of the object is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

(13) the existence and scope of legitimate uses for the object in the community;

(14) expert testimony concerning its use.

History: En. Sec. 2, Ch. 481, L. 1981.

45-10-103. Criminal possession of drug paraphernalia. It is unlawful for any person to use or to possess with intent to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: En. Sec. 3, Ch. 481, L. 1981.

45-10-104. Manufacture or delivery of drug paraphernalia. It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing or under circumstances where one reasonably should know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a dangerous drug. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: En. Sec. 4, Ch. 481, L. 1981.

45-10-105. Delivery of drug paraphernalia to a minor. Any person 18 years of age or over who violates 45-10-104 by delivering drug paraphernalia to a person under 18 years of age who is at least 3 years his junior is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 1 year, fined not more than $1,000, or both.

History: En. Sec. 5, Ch. 481, L. 1981.

45-10-106. Advertisement of drug paraphernalia. It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement knowing or under circumstances where one reasonably should know that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of a misdemeanor and upon conviction shall be imprisoned in the county jail for not more than 6 months, fined not more than $500, or both.

History: En. Sec. 6, Ch. 481, L. 1981.

45-10-107. Exemptions. Practitioners and agents under their supervision acting in the course of a professional practice as defined by 50-32-101 are exempt from this part.

History: En. Sec. 7, Ch. 481, L. 1981.

TITLE 46

CRIMINAL PROCEDURE

Ch.
1. General Provisions.
2. Jurisdiction.
3. Venue.
4. Investigative Procedures.
5. Search and Seizure.
6. Arrest.
7. Initial Appearance of Arrested Person.
8. Right to Counsel.
9. Bail.
10. Preliminary Examination.
11. Commencement of Prosecution.
12. Arraignment of Defendant.
13. Pretrial Motions.
14. Mental Competency of Accused.
15. Production of Evidence.
16. Trial in District Court.
17. Lower Court Proceedings.
18. Sentence and Judgment.
19. Execution of Judgment.
20. Appeals.
21. Postconviction Hearing.
22. Habeas Corpus.
23. Probation, Parole, and Clemency.
24. Treatment of Victims and Witnesses.

Chapters 25 through 29 reserved.

30. Uniform Criminal Extradition Act.
31. Interstate Agreement on Detainers.

CHAPTER 1

GENERAL PROVISIONS

Part 1 — Purpose and Application of Title

46-1-101. Repealed.
46-1-102. Repealed.
46-1-103. Scope — purpose — construction.

Part 2 — Definitions

46-1-201. Repealed.
46-1-202. Definitions.

Part 3 — Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action.

46-1-302. Notice of appeal to be served on attorney general.

Chapter Cross-References

Publication of rules of criminal procedure, 1-11-204.

Courts and judicial officers, Title 3, ch. 1.

Court actions permitted on nonjudicial days, 3-1-302.

Subsequent applications for orders refused — contempt, 3-1-502, 3-1-503.

District Courts, Title 3, ch. 5.

Crimes, Title 45.

Part 1

Purpose and Application of Title

Part Cross-References

Administration of justice, Art. II, sec. 16, Mont. Const.

Due process, Art. II, sec. 17, Mont. Const.

Board of Crime Control, 2-15-2006, 44-4-301.

Types of actions — civil and criminal, 27-1-103.

Attorney General — criminal investigation, Title 44, ch. 2, part 1.

State system of criminal identification, Title 44, ch. 2, part 2.

Teletypewriter communications, Title 44, ch. 2, part 3.

Training coordinator for County Attorneys, Title 44, ch. 4, part 1.

Law Enforcement Academy, Title 44, ch. 10.

46-1-101. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 184, L. 1977; R.C.M. 1947, 95-101.

46-1-102. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-102.

46-1-103. Scope — purpose — construction. (1) This title governs the practice and procedure in all criminal proceedings in the courts of Montana except where provision for a different procedure is specifically provided by law.

(2) This title is intended to provide for the just determination of every criminal proceeding. The purposes of this title are to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

(3) Any irregularity in a proceeding specified by this title that does not affect the substantial rights of the accused must be disregarded.

History: En. Sec. 1, Ch. 800, L. 1991.

Part 2

Definitions

46-1-201. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-201, 95-203, 95-204, 95-205, 95-206, 95-207, 95-208, 95-209, 95-210, 95-211.

46-1-202. Definitions. As used in this title, unless the context requires otherwise, the following definitions apply:

(1) "Arraignment" means the formal act of calling the defendant into open court to enter a plea answering a charge.

(2) "Arrest" means taking a person into custody in the manner authorized by law.

(3) "Arrest warrant" means a written order from a court directed to a peace officer or to some other person specifically named commanding that officer or person to arrest another. The term includes the original warrant of arrest and a copy certified by the issuing court.

(4) "Bail" means the security given for the primary purpose of ensuring the presence of the defendant in a pending criminal proceeding.

(5) "Charge" means a written statement that accuses a person of the commission of an offense, that is presented to a court, and that is contained in a complaint, information, or indictment.

(6) "Concealment" means any act or deception done purposely or knowingly upon or outside the premises of a wholesale or retail store or other mercantile establishment with the intent to deprive the merchant of all or part of the value of the merchandise.

(7) "Conviction" means a judgment or sentence entered upon a guilty plea or upon a verdict or finding of guilty rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(8) "Court" means a place where justice is judicially administered and includes the judge of the court.

(9) "Included offense" means an offense that:

(a) is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(b) consists of an attempt to commit the offense charged or to commit an offense otherwise included in the offense charged; or

(c) differs from the offense charged only in the respect that a less serious injury or risk to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(10) "Judge" means a person who is vested by law with the power to perform judicial functions.

(11) "Judgment" means an adjudication by a court that the defendant is guilty or not guilty, and if the adjudication is that the defendant is guilty, it includes the sentence pronounced by the court.

(12) "Make available for examination and reproduction" means to make material and information that is subject to disclosure available upon request at a designated place during specified reasonable times and to provide suitable facilities or arrangements for reproducing it. The term does not mean that the disclosing party is required to make copies at its expense, to deliver the materials or information to the other party, or to supply the facilities or materials required to carry out tests on disclosed items. The parties may by mutual consent make other or additional arrangements.

(13) "New trial" means a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered.

(14) "Notice to appear" means a written direction that is issued by a peace officer and that requests a person to appear before a court at a stated time and place to answer a charge for the alleged commission of an offense.

(15) "Offense" means a violation of any penal statute of this state or any ordinance of its political subdivisions.

(16) "Parole" means the release to the community of a prisoner by a decision of the board of pardons prior to the expiration of the prisoner's term subject to conditions imposed by the board of pardons and the supervision of the department of corrections and human services.

(17) "Peace officer" means any person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person's authority.

(18) "Persistent felony offender" means an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either:

(i) the previous felony conviction; or

(ii) the offender's release on parole or otherwise from prison or other commitment imposed as a result of a previous felony conviction; and

(c) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside at the postconviction hearing.

(19) "Place of trial" means the geographical location and political subdivision in which the court that will hear the cause is situated.

(20) "Preliminary examination" means a hearing before a judge for the purpose of determining if there is probable cause to believe a felony has been committed by the defendant.

(21) "Probation" means release by the court without imprisonment of a defendant found guilty of a crime. The release is subject to the supervision of the department of corrections and human services upon direction of the court.

(22) "Prosecutor" means an elected or appointed attorney who is vested by law with the power to initiate and carry out criminal proceedings on behalf of the state or a political subdivision.

(23) "Same transaction" means conduct consisting of a series of acts or omissions that are motivated by:

(a) a purpose to accomplish a criminal objective and that are necessary or incidental to the accomplishment of that objective; or

(b) a common purpose or plan that results in the repeated commission of the same offense or effect upon the same person or the property of the same person.

(24) "Search warrant" means an order that is:

(a) in writing;

(b) in the name of the state;

(c) signed by a judge;

(d) a particular description of the place, object, or person to be searched and the evidence, contraband, or person to be seized; and

(e) directed to a peace officer and commands the peace officer to search for evidence, contraband, or persons.

(25) "Sentence" means the judicial disposition of a criminal proceeding upon a plea, verdict, or finding of guilty.

(26) "Statement" means:

(a) a writing signed or otherwise adopted or approved by a person;

(b) a video or audio recording of a person's communications or a transcript of the communications; and

(c) a writing containing a summary of a person's oral communications or admissions.

(27) "Summons" means a written order issued by the court that commands a person to appear before a court at a stated time and place to answer a charge for the offense set forth in the order.

(28) "Superseded notes" means handwritten notes, including field notes, that have been substantially incorporated into a statement. The notes may not be considered a statement and are not subject to disclosure except as provided in 46-15-324.

(29) "Temporary road block" means any structure, device, or means used by a peace officer for the purpose of controlling all traffic through a point on the highway where all vehicles may be slowed or stopped.

(30) "Witness" means a person whose testimony is desired in a proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(31) "Work product" means legal research, records, correspondence, reports, and memoranda, both written and oral, to the extent that they contain the opinions, theories, and conclusions of the prosecutor, defense counsel, or their staff or investigators.

History: En. Sec. 2, Ch. 800, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Part 3

Notice to Attorney General

46-1-301. Notice to be given to attorney general when state department or board initiates or intervenes in an action. When a department or board of this state initiates or intervenes in an action in any court, a copy of the complaint, counterclaim, or cross-claim must be served on the attorney general.

History: En. Sec. 1, Ch. 91, L. 1979.

46-1-302. Notice of appeal to be served on attorney general. When a department or board of this state appeals from a judgment or order entered in any court of this state, a copy of the notice of appeal must be served on the attorney general.

History: En. Sec. 2, Ch. 91, L. 1979.

Cross-References

Initiation of criminal appeal by state, Title 46, ch. 20, part 2.

CHAPTER 2

JURISDICTION

Part 1 — Jurisdiction of the State

46-2-101. State criminal jurisdiction.

Part 2 — Jurisdiction of the Courts

46-2-201. Jurisdiction of the district court.
46-2-202. Jurisdiction of justices' courts.
46-2-203. Jurisdiction of city courts.
46-2-204. Jurisdiction of municipal courts.

Part 1

Jurisdiction of the State

Part Cross-References

Sovereignty and jurisdiction of the state, Title 2, ch. 1.

Criminal jurisdiction of the state — national forests, 2-1-210.

State criminal jurisdiction over Flathead Indians, 2-1-301.

State criminal jurisdiction over other tribes, 2-1-302, 2-1-303, 2-1-306.

Limits on local government jurisdiction, 7-1-111.

46-2-101. State criminal jurisdiction. (1) A person is subject to prosecution in this state for an offense which he commits while either within or outside the state by his own conduct or that of another for which he is legally accountable if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state and an act in furtherance of the offense occurs in the state; or

(c) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of this state and such other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is an element of the offense or the result which is an element occurs within the state. In homicide, the "result" is either the physical contact which causes death or the death itself, and if the body of a homicide victim is found within the state, the death is presumed to have occurred within the state.

(3) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state, regardless of the location of the offender at the time of the omission.

(4) This state includes the land and water and the air space above such land and water with respect to which the state has legislative jurisdiction.

History: En. 95-304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-304.

Part 2

Jurisdiction of the Courts

Part Cross-References

Jurisdiction of District Courts and other courts, Art. VII, Mont. Const.

Jurisdiction of Justices' Courts, Art. VII, sec. 5, Mont. Const.

Means to carry jurisdiction into effect, 3-1-113.

District Court jurisdiction, 3-5-302.

Jurisdiction of Justices' Courts, 3-10-303.

Jurisdiction of City Court, 3-11-102, 3-11-103.

Jurisdiction of military courts, 10-1-403, 10-1-408.

Jurisdiction of District and Justices' Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of District and Justices' Courts — dentistry, 37-4-328.

Youth Court Act, Title 41, ch. 5.

Jurisdiction of Youth Court, 41-5-203.

Transfer from Youth Court to District Court, 41-5-206.

Determination of court's jurisdiction, 45-1-201.

District Court jurisdiction — official misconduct, 45-7-401.

District Court jurisdiction — supervision of milk industry, 81-23-405.

46-2-201. Jurisdiction of the district court. The district courts have jurisdiction of all public offenses not otherwise provided for.

History: En. 95-301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-301.

Cross-References

District Court jurisdiction, Art. VII, sec. 4, Mont. Const.; 3-5-302.

Jurisdiction of District Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of District Courts — dentistry, 37-4-328.

Transfer from Youth Court to District Court, 41-5-206.

District Court jurisdiction — official misconduct, 45-7-401.

District Court jurisdiction — supervision of milk industry, 81-23-405.

46-2-202. Jurisdiction of justices' courts. The justices' courts have criminal jurisdiction as authorized by 3-10-303.

History: En. 95-302.1 by Sec. 2, Ch. 184, L. 1977; R.C.M. 1947, 95-302.1.

Cross-References

Jurisdiction of Justices' Courts, Art. VII, sec. 5, Mont. Const.; 3-10-303.

Jurisdiction of Justices' Courts — Alcoholic Beverage Code, 16-6-201.

Jurisdiction of Justices' Courts — dentistry, 37-4-328.

Dangerous Drug Act, Title 45, ch. 9.

46-2-203. Jurisdiction of city courts. The city courts have criminal jurisdiction as authorized by 3-11-102 and 3-11-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(a).

Cross-References

Jurisdiction of City Courts, 3-11-102 through 3-11-104.

46-2-204. Jurisdiction of municipal courts. Municipal courts have criminal jurisdiction as authorized by 3-6-103.

History: En. 95-303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-303(b).

CHAPTER 3

VENUE

Part 1 — General Provisions

46-3-101. Renumbered 46-3-111 by Code Commissioner, 1991.
46-3-102. Renumbered 46-3-112 by Code Commissioner, 1991.
46-3-103. Repealed.
46-3-104. Renumbered 46-3-113 by Code Commissioner, 1991.
46-3-105. Renumbered 46-3-114 by Code Commissioner, 1991.
46-3-106. Renumbered 46-3-115 by Code Commissioner, 1991.
46-3-107 through 46-3-109 reserved.
46-3-110. Filing the charge.
46-3-111. Place of trial.
46-3-112. Requisite act in multiple counties.
46-3-113. Assisting in commission of or committing an offense.
46-3-114. County of offense unknown.
46-3-115. Offense consummated within the state.

Part 2 — Venue for Certain Specific Crimes
(Repealed. Sec. 263, Ch. 800, L. 1991)

Part 1

General Provisions

46-3-101. Renumbered 46-3-111 by Code Commissioner, 1991.

46-3-102. Renumbered 46-3-112 by Code Commissioner, 1991.

46-3-103. Repealed. Sec. 263, Ch. 800, L. 1991.

History: **En. 95-403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-403.**

46-3-104. Renumbered 46-3-113 by Code Commissioner, 1991.

46-3-105. Renumbered 46-3-114 by Code Commissioner, 1991.

46-3-106. Renumbered 46-3-115 by Code Commissioner, 1991.

46-3-107 through 46-3-109 reserved.

46-3-110. Filing the charge. In all criminal prosecutions, the charge must be filed in the county where the offense was committed unless otherwise provided by law.

History: **En. Sec. 3, Ch. 800, L. 1991.**

46-3-111. Place of trial. (1) The place of trial must be in the county where the charge is filed unless otherwise provided by law.

(2) All objections that a charge is filed in the improper county are waived by a defendant unless made before the first witness is sworn at the time of trial. If an objection is made, a hearing must be held and the proper county in which to file the charge must be established before further proceedings may take place.

History: **En. 95-401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-401; amd. Sec. 4, Ch. 800, L. 1991; Sec. 46-3-101, MCA 1989; redes. 46-3-111 by Code Commissioner, 1991.**

Compiler's Comments

1991 Amendment: At beginning of (1) deleted "In all criminal prosecutions" and before "unless" substituted "charge is filed" for "offense was committed"; in (2), near end of first sentence, inserted "the first witness is sworn at the time of" and in second sentence substituted "proper county in which to file the charge" for "venue" and at end substituted "further proceedings may take place" for "proceeding to trial"; and made minor changes in style.

Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

46-3-112. Requisite act in multiple counties. (1) When two or more acts are requisite to the commission of an offense or when two or more acts are committed in furtherance of a common scheme, the charge may be filed in any county in which any of the acts or offenses occurred.

(2) When an act requisite to the commission of an offense occurs or continues in more than one county, the charge may be filed in any county in which the act occurred or continued.

History: **En. 95-402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-402; amd. Sec. 1, Ch. 468, L. 1981; amd. Sec. 5, Ch. 800, L. 1991; Sec. 46-3-102, MCA 1989; redes. 46-3-112 by Code Commissioner, 1991.**

Compiler's Comments

1991 Amendment: In (1), near end, substituted "charge may be filed" for "trial may be"; inserted (2) concerning act occurring in more than one county; and made minor changes in style.

46-3-113. Assisting in commission of or committing an offense. When a person in one county commits an offense or aids, abets, or procures the commission of an offense in another county, the charge may be filed in either county.

History: **En. 95-404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-404; amd. Sec. 6, Ch. 800, L. 1991; Sec. 46-3-104, MCA 1989; redes. 46-3-113 by Code Commissioner, 1991.**

Compiler's Comments

1991 Amendment: Near end substituted "charge may be filed" for "offender may be tried"; and made minor changes in style.

Cross-References

When a person is legally accountable for the conduct of another, 45-2-302.

46-3-114. County of offense unknown. (1) If the county in which the offense was committed cannot be readily determined, the offender may be charged in any county in which it appears that an element of the offense occurred.

(2) When an offense is committed in or against a public or private conveyance and it is doubtful in which county the offense occurred, the charge may be filed in any county in or through which the conveyance has traveled.

History: En. 95-405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-405; amd. Sec. 7, Ch. 800, L. 1991; Sec. 46-3-105, MCA 1989; redes. 46-3-114 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Inserted (1) concerning inability to determine county of offense; and substituted (2) concerning offense against public or private conveyance for former text that read: "(2) If an offense is committed in, on, or against any instrument of conveyance passing within this state and it cannot readily be determined in which county the offense was committed, the offender may be tried in any county through which such instrument of conveyance has passed or in the county where the travel terminates".

46-3-115. Offense consummated within the state. If an offense is committed partly within this state, the offense may be charged in any county where an act requisite to the commission of the offense is committed or continued.

History: En. 95-407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-407; amd. Sec. 8, Ch. 800, L. 1991; Sec. 46-3-106, MCA 1989; redes. 46-3-115 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Substituted present text concerning charging of offense in any county where act requisite to offense is committed or continued for former text that read: "If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense was consummated".

Part 2

Venue for Certain Specific Crimes (Repealed. Sec. 263, Ch. 800, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

46-3-201. En. 95-406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-406.

46-3-202. En. 95-408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 71, Ch. 359, L. 1977; R.C.M. 1947, 95-408.

46-3-203. En. 95-409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-409.

46-3-204. En. 95-410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-410.

46-3-205. En. 95-411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-411.

46-3-206. En. 95-412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-412.

CHAPTER 4

INVESTIGATIVE PROCEDURES

Part 1 — Investigation of Death—Autopsy

46-4-101. Jurisdiction — death and cause of death in different counties.
46-4-102. Repealed.
46-4-103. Autopsy — when conducted, scope.
46-4-104. Liability of mortuary or physician.
46-4-105 through 46-4-109 reserved.
46-4-110. Powers of coroner.
46-4-111. Coroner's authority to seize and preserve evidence.
46-4-112. Subpoenaing of witnesses and documents.
46-4-113. Examinations and tests.
46-4-114. Reporting fetal deaths.
46-4-115 through 46-4-120 reserved.
46-4-121. Inquiry defined.
46-4-122. Human deaths requiring inquiry by coroner.
46-4-123. Inquiry report.

Part 2 — Inquests

46-4-201. Inquest — definition, when held, how conducted.
46-4-202. Summoning and swearing in of jurors — instructions.
46-4-203. Coroner's subpoena.
46-4-204. Repealed.
46-4-205. Verdict of jury — form.
46-4-206. Recording and filing of testimony and proceedings.
46-4-207. Coroner's register.

Part 3 — Investigative Subpoenas

46-4-301. Issuance of subpoena.
46-4-302. Penalty for failure to appear or obey.
46-4-303. Relief from improper subpoena.
46-4-304. Conduct of investigative inquiry.
46-4-305. Self-incrimination — immunity.
46-4-306. Applicability of other laws — costs.

Chapter Cross-References

County Coroner, Title 7, ch. 4, part 29.

Witness fees — inquests, 26-2-503.

Part 1

Investigation of Death — Autopsy

46-4-101. Jurisdiction — death and cause of death in different counties. (1) The coroner of the county where a dead human body is found has jurisdiction if:

(a) the place of death is unknown;

(b) the dead human body was shipped into the county without proper permits; or

(c) the death occurred while the deceased was in transit in the state.

(2) When death occurs as a direct result of acts or events that occurred in another county, the coroner of the county where the acts or events causing death occurred has jurisdiction. If a coroner that has jurisdiction of a death fails to act, the state medical examiner has jurisdiction.

(3) A county coroner has primary jurisdiction in the county in which he is appointed or elected to serve; however, a qualified coroner may serve in another county upon the request of the coroner or county attorney of that county. A coroner may travel to another county to inquire into a death pursuant to 46-4-122.

History: En. 95-812 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-812; amd. Sec. 13, Ch. 660, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (1) relating to jurisdiction of Coroner of county where dead human body is found; in (2), at end of first sentence, substituted "the coroner of the county where the acts or events causing death occurred has jurisdiction" for "the coroner of either county shall have jurisdiction" and in second sentence substituted "If a coroner that has jurisdiction of a death fails to act, the state medical examiner has jurisdiction" for "If a conflict of jurisdiction should arise or should said coroners fail to act, the coroner of the county where the death occurred shall have the primary jurisdiction"; inserted (3) relating to jurisdiction of Coroner in county in which he serves and relating to travel to another county; and made minor changes in style.

Coordination: Section 265(3), Ch. 800, L. 1991, provided: "If Senate Bill No. 331 is passed and approved and if it includes a section that amends 46-4-101, then the sections of [this act] that amends 46-4-101 is void." Senate Bill No. 331 amended 46-4-101 and was enacted as Ch. 660, L. 1991.

46-4-102. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. 95-801 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 530, L. 1977; R.C.M. 1947, 95-801.

46-4-103. Autopsy — when conducted, scope. (1) If in the opinion of the coroner an autopsy is advisable, he shall order one performed on any dead human body for which the death requires an inquiry and shall retain a medical examiner or associate medical examiner to perform it. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. Consent of the family or next of kin of the deceased is not required for an autopsy that is ordered by the coroner, county attorney, or attorney general. In ordering an autopsy the coroner, county attorney, or attorney general shall order the body to be exhumed if it has been interred.

(2) The right to conduct an autopsy includes the right to retain specimens the medical examiner performing the autopsy considers necessary.

(3) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy, investigation, or inquiry is initiated at the request of the county attorney or county coroner.

(4) If a county does not provide a morgue or other facility for post-mortem examination, the county coroner may order the use of a funeral home or an appropriate hospital facility for the examination.

History: En. 95-802 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; amd. Sec. 25, Ch. 530, L. 1977; R.C.M. 1947, 95-802; amd. Sec. 14, Ch. 660, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence, inserted "performed on any dead human body for which the death requires an inquiry" and inserted "or associate medical examiner", inserted third sentence relating to no need for family consent of an ordered autopsy, and in last sentence inserted "county attorney, or attorney general"; deleted former (2) that read: "(2) A full record of the facts found shall be made on a form provided by the division of forensic science in triplicate, the coroner and medical examiner retaining one copy and delivering the other to the county attorney"; in (3), after "investigation", inserted "or inquiry"; inserted (4) relating to appropriate facilities if a morgue is not provided; and made minor changes in style.

Coordination: Section 265(4), Ch. 800, L. 1991, provided: "If Senate Bill No. 331 is passed and approved and if it includes a section that amends 46-4-103, then the section of [this act] that amends 46-4-103 is void." Senate Bill No. 331 amended 46-4-103 and was enacted as Ch. 660, L. 1991.

Cross-References

Records and findings — copies maintained by State Medical Examiner's office, 44-3-214.

46-4-104. Liability of mortuary or physician. A mortuary owner or person employed in a mortuary is not liable for the acts of the coroner performed in the removal of a body to a mortuary or during the course of an autopsy on that body. No criminal or civil action may arise against a licensed physician for performing an autopsy authorized by this chapter or for performing an autopsy on request of a federal officer investigating a death within a federal jurisdiction.

History: En. 95-813 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-813; amd. Sec. 2, Ch. 492, L. 1985; amd. Sec. 12, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Cross-References

Exemption from liability for autopsy, 44-3-401.

46-4-105 through 46-4-109 reserved.

46-4-110. Powers of coroner. In the performance of his duties under this chapter, the coroner may:

(1) pronounce the fact of death of any human being under circumstances in which he has a duty to inquire pursuant to 46-4-122;

(2) certify and amend death certificates as considered necessary in circumstances under which he has a duty to inquire pursuant to 46-4-122;

(3) issue subpoenas pursuant to 46-4-112;

(4) order autopsies as provided in 46-4-103;

(5) conduct examinations and tests as considered necessary to determine the cause, manner, and circumstances of death and identification of a dead human body as provided in 46-4-101 and 46-4-113;

(6) order a dead human body to be disinterred or removed from its place of disposition, with or without the consent of the next of kin, under circumstances in which he has a duty to inquire pursuant to 46-4-122;

(7) conduct inquests pursuant to 46-4-201; and

(8) order cessation of any activity by any person or agency, other than the law enforcement agency having jurisdiction, that may obstruct or hinder the orderly conduct of an inquiry or the collection of information or evidence needed for an inquiry.

History: En. Sec. 2, Ch. 660, L. 1991.

46-4-111. Coroner's authority to seize and preserve evidence. (1) A county coroner may enter any room, dwelling, building, or other place in which he has probable cause to believe that a dead human body or evidence of the circumstances of a death that requires investigation may be found. If refused entry, a coroner who is investigating a death pursuant to his authority may apply to a judge authorized to issue search warrants for a warrant to enter the premises and to search for and seize evidence of the cause of a death, including a dead human body.

(2) The application for a search warrant must:

(a) state facts sufficient to show probable cause that a human body or evidence of the circumstances of death is present in the place to be searched;

(b) particularly describe the place to be searched; and

(c) particularly describe the things to be seized.

(3) To preserve evidence of the cause of death, a coroner may:

(a) place under his custody and control any dwelling, building, item, vehicle, aircraft, railroad engine or train, vessel, enclosure, or open area for a period of not more than 10 days; and

(b) forbid entrance by an unauthorized person into any area specified in subsection (3)(a).

(4) A person may not enter an area that is restricted pursuant to subsection (3) without the permission of the coroner or the law enforcement agency having jurisdiction if there is also a criminal investigation in progress.

History: En. Sec. 1, Ch. 660, L. 1991.

46-4-112. Subpoenaing of witnesses and documents. (1) In an inquiry or inquest, a coroner may:

(a) issue subpoenas for witnesses as provided in 46-4-203; and

(b) issue subpoenas commanding the production of books, records, papers, documents, and other objects as may be necessary and proper to the inquiry or inquest.

(2) Any material subpoenaed pursuant to subsection (1)(b) is confidential criminal justice information, as defined in 44-5-103, and public access to the information may be obtained only in accordance with 44-5-303. However, any material produced at an inquest is public information.

(3) Disobedience of a subpoena issued under 46-4-203 or this section is punishable in the same manner as disobedience of a subpoena issued by a justice of the peace as provided in Title 3, chapter 10, part 4.

History: En. Sec. 7, Ch. 660, L. 1991.

46-4-113. Examinations and tests. The coroner may direct a properly qualified expert to conduct any test or examination that he reasonably believes is necessary to determine the cause, manner, and circumstances of a death or to identify a dead human body. The coroner may also require examination by the next of kin or any other person when necessary to identify a dead human body.

History: En. Sec. 8, Ch. 660, L. 1991.

46-4-114. Reporting fetal deaths. A licensed nurse, a midwife, a physician assistant-certified, an emergency medical technician, a birthing assistant, or any other person who assists in the delivery that occurs outside a licensed medical facility of a fetus that is believed or declared to be dead shall report the death by the earliest means available to the coroner of the county in which the death occurred.

History: En. Sec. 6, Ch. 660, L. 1991.

46-4-115 through 46-4-120 reserved.

46-4-121. Inquiry defined. For the purposes of this part, an inquiry by a county coroner is an informal examination of a death and its attendant circumstances to determine whether:

(1) an inquest, which is a formal inquiry, should be held;

(2) the reporting physician should certify the death;

(3) any further action or examination should be made concerning a death; or

(4) there is anything unusual or remarkable about a death that may warrant further action by the county attorney or the law enforcement agency that has jurisdiction.

History: En. Sec. 3, Ch. 660, L. 1991.

46-4-122. Human deaths requiring inquiry by coroner. The coroner shall inquire into and determine the cause and manner of death and all circumstances surrounding a human death:

(1) that was caused or is suspected to have been caused:

(a) in any degree by an injury, either recent or remote in origin; or

(b) by the deceased or any other person that was the result of an act or omission, including but not limited to:

(i) a criminal or suspected criminal act;

(ii) a medically suspicious death, unusual death, or death of unknown circumstances, including any fetal death; or

(iii) an accidental death; or

(c) by an agent, disease, or medical condition that poses a threat to public health;

(2) whenever the death occurred:

(a) while the deceased was incarcerated in a prison or jail or confined to a correctional or detention facility owned and operated by the state or a political subdivision of the state;

(b) while the deceased was in the custody of, or was being taken into the custody of, a law enforcement agency or a peace officer;

(c) during or as a result of the deceased's employment;

(d) less than 24 hours after the deceased was admitted to a medical facility or if the deceased was dead upon arrival at a medical facility; or

(e) in a manner that was unattended or unwitnessed and the deceased was not attended by a physician at any time in the 30-day period prior to death;

(3) if the dead human body is to be cremated or lacks proper medical certification or burial or transmit permits; or

(4) that occurred under suspicious circumstances.

History: En. Sec. 4, Ch. 660, L. 1991.

46-4-123. Inquiry report. The coroner shall make a full report of the facts discovered in all human deaths requiring an inquiry under the provisions of 46-4-122. The report must be made in triplicate on a form provided by the division of forensic science of the department of justice. The coroner and the medical examiner shall each retain one copy and shall deliver the other copy to the county attorney. If the coroner orders an autopsy during the course of an inquiry, he shall also provide the medical examiner with a copy of the autopsy report. The forms must be completed and distributed as provided in this section as promptly as practicable.

History: En. Sec. 5, Ch. 660, L. 1991.

Part 2

Inquests

Part Cross-References

Jury of inquest defined, 3-15-105.

Jurors' fees, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries of inquest — summoning and impaneling, Title 3, ch. 15, part 8.

46-4-201. Inquest — definition, when held, how conducted. (1) An inquest is a formal inquiry into the causes of and circumstances surrounding the death of any person and is conducted by the coroner before a coroner's jury.

(2) The coroner shall hold an inquest only if requested to do so by the county attorney of the county in which death occurred or by the county attorney of the county in which the acts or events causing death occurred. However, if the death of any person occurs in a jail or penal institution, while a person is being taken into custody or is in the custody of a peace officer, or is caused by a peace officer, except where criminal charges have been or will be filed, the county attorney shall order the coroner to hold an inquest.

(3) If an inquest is held, the proceedings are public. The coroner shall conduct the inquest with the aid and assistance of the county attorney. The coroner shall, and the county attorney may, examine each witness, after which the witness may be examined by the jurors. The inquest is to be held in accordance with this part.

(4) (a) A coroner who also serves as a peace officer may not conduct an inquest into the death of a person who:

(i) died in a jail or penal institution;

(ii) died while in the custody of a peace officer; or

(iii) was killed by a peace officer.

(b) If a coroner is disqualified under subsection (4)(a), the county attorney shall request a qualified coroner of a neighboring county to conduct the inquest. The expenses of a coroner fulfilling the request, including salary, must be paid by the requesting county.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sec. 95-809, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-809; amd. Sec. 1, Ch. 343, L. 1983; amd. Sec. 15, Ch. 660, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at end, inserted "and is conducted by the coroner before a coroner's jury"; in (2), in second sentence, inserted "while a person is being taken into custody or is in the custody of a peace officer", substituted "is caused by a peace officer" for "from the use of a firearm by a peace officer", and at end substituted "shall order" for "shall direct"; in (3) inserted third sentence relating to examination of witnesses; and made minor changes in style.

Coordination: Section 20(1), Ch. 660, L. 1991, provided: "If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-201, then that section of Senate Bill No. 51 is void."

Cross-References

Jury of inquest defined, 3-15-105.

46-4-202. Summoning and swearing in of jurors — instructions. (1) For holding an inquest, the coroner shall summon a jury of at least 6 but not more than 12 persons qualified by law to serve as jurors and selected at random from a list of eligible jurors that is furnished to the coroner annually by the county clerk of court.

(2) The jury selected by the coroner must be sworn by the coroner to inquire who the person was and when, where, and by what means he came to his death and into the circumstances attending his death and to render a true verdict on the death according to the evidence offered to them or arising from the inspection of the body.

(3) The coroner shall instruct the jurors as to their duties.

History: (1)En. 95-803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 250, L. 1975; Sec. 95-803, R.C.M. 1947; (2)En. 95-804 by Sec. 1, Ch. 196, L. 1967; Sec. 95-804, R.C.M. 1947; R.C.M. 1947, 95-803(part), 95-804; amd. Sec. 2, Ch. 343, L. 1983; amd. Sec. 16, Ch. 660, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning, substituted "jury of at least 6 but not more than 12 persons" for "a jury of not more than nine persons" and at end inserted "and selected at random from a list of eligible jurors that is furnished to the coroner annually by the county clerk of court"; in (2), at beginning, substituted "The jury selected by the coroner must" for "When six or more of the jurors attend, they must"; and made minor changes in style.

Coordination: Section 20(2), Ch. 660, L. 1991, provided: "If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-202, then that section of Senate Bill No. 51 is void."

Cross-References

Jurors' fees, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries of inquest — summoning and impaneling, Title 3, ch. 15, part 8.

46-4-203. Coroner's subpoena. Upon the request of the county attorney, a coroner shall issue subpoenas for witnesses, returnable immediately or at a time and place the coroner may designate, that may be served by any competent person.

History: En. 95-805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-805; amd. Sec. 1, Ch. 116, L. 1979; amd. Sec. 15, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning inserted "Upon the request of the county attorney" and deleted second sentence that read: "He shall summon and examine as a witness each person who, in his opinion or that of the jury, has any knowledge of the facts and may summon a surgeon or physician to inspect the body and give a professional opinion as to the cause of the death"; and made minor changes in style.

Cross-References

Witnesses at inquests, 26-2-503.

46-4-204. Repealed. Sec. 21, Ch. 660, L. 1991.

History: En. 95-806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-806; amd. Sec. 3, Ch. 343, L. 1983.

46-4-205. Verdict of jury — form. The jury may view the body, and the county attorney may require the jury to view the body. The jury shall review the death scene and may do so by videotape, photographs, or slide transparencies. After viewing the body and the death scene and hearing the testimony, the jury shall render its verdict, which must be by majority vote, and certify the same in writing signed by each juror. The verdict must set forth:

(1) who the deceased person is;

(2) when and where he came to his death;

(3) if he came to his death by criminal means; and

(4) if he was killed or his death was occasioned by the act of another by criminal means, who committed the act, if known. If the jury finds that the death was not by criminal means, that fact must be stated on the verdict form.

History: En. 95-807 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-807; amd. Sec. 17, Ch. 660, L. 1991.

Compiler's Comments

1991 Amendment: Inserted first two sentences relating to viewing the body and review of the death scene and in third sentence, at beginning, substituted "After viewing the body and the death scene" for "After inspecting the body"; in (2), after "where", deleted "and by what means"; inserted (3) relating to whether death was by criminal means; at end of (4) inserted "if known. If the jury finds that the death was not by criminal means, that fact must be stated on the verdict form"; and made minor changes in style.

Coordination: Section 20(3), Ch. 660, L. 1991, provided: "If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-205, then that section of Senate Bill No. 51 is void."

46-4-206. Recording and filing of testimony and proceedings. Testimony before a coroner's jury must be given under oath. The testimony of the witnesses examined and proceedings before the coroner's jury must be recorded and transcribed by a competent stenographer appointed by the coroner. The record of the inquest and the verdict of the jury must be filed by the coroner in the office of the clerk of the district court of the county in which the inquest was held. The expenses of recording and transcribing must be paid by the county upon claims duly rendered and certified to by the coroner in the same manner as other claims against the county are paid.

History: En. 95-808 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-808; amd. Sec. 18, Ch. 660, L. 1991.

Compiler's Comments

1991 Amendment: Inserted first sentence relating to testimony under oath, in second and third sentences substituted "witnesses examined and proceedings before the coroner's jury must be recorded and transcribed by a competent stenographer appointed by the coroner. The record of the inquest and the verdict of the jury must be filed by the coroner" for "witnesses examined before the coroner's jury must be reduced to writing by the coroner or under his direction and forthwith filed by him with the inquisition", at end of third sentence, after "district court of the county", inserted "in which the inquest was held", and deleted former second sentence that read: "The coroner must order the inquest proceedings recorded and transcribed by a qualified stenographer"; and made minor changes in style.

Coordination: Section 20(4), Ch. 660, L. 1991, provided: "If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-4-206, then that section of Senate Bill No. 51 is void."

46-4-207. Coroner's register. The county coroner shall keep an official register, in which he must enter the date of holding all inquests, the cause and circumstances of death, if known, and the name of the deceased, when known, and, when not, such description of the deceased as may be sufficient for identification.

History: En. 95-811 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-811.

Part 3

Investigative Subpoenas

Part Cross-References

Subpoenas, Title 26, ch. 2, part 1.

Subpoenas and witnesses, Title 46, ch. 15, part 1.

46-4-301. Issuance of subpoena. Whenever a prosecutor has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the prosecutor and give testimony and produce books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may be issued only when it appears upon the affidavit of the prosecutor that the administration of justice requires it to be issued.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(1); amd. Sec. 19, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In three places substituted references to prosecutor for references to Attorney General or County Attorney; and made minor changes in style.

46-4-302. Penalty for failure to appear or obey. (1) A person who, without just cause, fails to obey a subpoena served under this part is punishable for contempt of court.

(2) (a) A person who, after being granted immunity under 46-4-305, refuses to give testimony or produce evidence under this part must be brought without unnecessary delay before the judge issuing the subpoena or, in that judge's absence or inability to act, before the nearest or most accessible judge, who shall inform the person:

(i) of the contents and requirements of the subpoena;

(ii) that the person has been granted immunity and may not be excused from testifying or producing evidence on the grounds that the testimony may incriminate the person; and

(iii) that a refusal to testify or produce evidence as commanded in the subpoena is punishable as a contempt of court under Title 3, chapter 1, part 5.

(b) In the presence of the judge, the person must be examined by the prosecutor or produce evidence as commanded in the subpoena.

(c) A refusal to testify or produce evidence may be punished as a contempt under Title 3, chapter 1, part 5.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(2); amd. Sec. 1, Ch. 157, L. 1987; amd. Sec. 20, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (2)(b) substituted "prosecutor" for "county attorney"; and made minor changes in style.

46-4-303. Relief from improper subpoena. A person aggrieved by a subpoena issued pursuant to this part may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion must be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

History: En. 95-720 by Sec. 1, Ch. 486, L. 1977; R.C.M. 1947, 95-720(3); amd. Sec. 21, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor change in style.

46-4-304. Conduct of investigative inquiry. (1) The prosecutor may examine under oath all witnesses subpoenaed pursuant to this part. Testimony must be recorded. The witness has the right to have counsel present at all times. If the witness does not have funds to obtain counsel, the judge or justice shall appoint counsel.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this part.

History: En. 95-721 by Sec. 2, Ch. 486, L. 1977; R.C.M. 1947, 95-721; amd. Sec. 22, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "prosecutor" for "attorney general or the county attorney"; and made minor changes in style.

46-4-305. Self-incrimination — immunity. (1) No person subpoenaed to give testimony pursuant to this part may be required to make a statement or to produce evidence that may be personally incriminating.

(2) The prosecutor may, with the approval of the judge who authorized the issuance of the subpoena, grant a person subpoenaed immunity from the use of any compelled testimony or evidence or any information directly or indirectly derived from the testimony or evidence against that person in a criminal prosecution.

(3) Nothing in this part prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if the prosecutor determines, in the prosecutor's sole discretion, that the best interest of justice would be served by granting immunity.

(4) After being granted immunity, no person may be excused from testifying on the grounds that the testimony may be personally incriminating. Immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(5) Nothing in this part requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

History: En. 95-722 by Sec. 3, Ch. 486, L. 1977; R.C.M. 1947, 95-722; amd. Sec. 3, Ch. 577, L. 1983; amd. Sec. 23, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (2) substituted "prosecutor" for "attorney general or the county attorney", before "judge" deleted "justice or", and after "subpoena" deleted "on behalf of the state"; near beginning of (3) substituted "part" for "section"; and made minor changes in style.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

46-4-306. Applicability of other laws — costs. (1) The fees and mileage of witnesses subpoenaed pursuant to this part are the same as those required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, and the appropriate county shall bear all costs, including the cost of service, when the application for the subpoena is made by a county attorney.

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this part, including the provisions of 46-15-112, 46-15-113, and 46-15-120.

History: En. 95-723 by Sec. 4, Ch. 486, L. 1977; R.C.M. 1947, 95-723; amd. Sec. 259, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (2) substituted "46-15-112" for "46-15-111".

Cross-References

Witness fees, Title 26, ch. 2, part 5.

CHAPTER 5

SEARCH AND SEIZURE

Part 1 — Legality and Admissibility

46-5-101. Searches and seizures — when authorized.
46-5-102. Scope of search incident to arrest.
46-5-103. When search and seizure not illegal.
46-5-104. Repealed.

Part 2 — Search Warrants

46-5-201. Repealed.
46-5-202. Renumbered 46-5-221 by Code Commissioner, 1991.
46-5-203. Renumbered 46-5-224 by Code Commissioner, 1991.
46-5-204. Renumbered 46-5-310 by Code Commissioner, 1991.
46-5-205. Renumbered 46-5-226 by Code Commissioner, 1991.

46-5-206. Renumbered 46-5-227 by Code Commissioner, 1991.
46-5-207. Renumbered 46-5-225 by Code Commissioner, 1991.
46-5-208. Renumbered 46-5-228(1) by Code Commissioner, 1991.
46-5-209. Renumbered 46-5-228(2) by Code Commissioner, 1991.
46-5-210 and 46-5-211 reserved.
46-5-212. Pawnbroker to surrender stolen property.
46-5-213 through 46-5-219 reserved.
46-5-220. Authority to issue search warrant.
46-5-221. Grounds for search warrant.
46-5-222. Search warrants issued by telephone.
46-5-223. To whom search warrant directed.
46-5-224. What may be seized with search warrant.
46-5-225. When warrant may be served.
46-5-226. Service of search warrant.
46-5-227. Service and return of search warrant.
46-5-228. Procedures assisting in execution of service of search warrant.

Part 3 — Procedure in Regard to Property Seized

46-5-301. Return.
46-5-302. Repealed.
46-5-303. Renumbered 46-5-311 by Code Commissioner, 1991.
46-5-304. Renumbered 46-5-312 by Code Commissioner, 1991.
46-5-305. Disposition of unclaimed property.
46-5-306. Purpose.
46-5-307. Petition for destruction, disposal, or use of evidence.
46-5-308. Order.
46-5-309. Applicability of other statutes.
46-5-310. Filing of return.
46-5-311. Custody and disposition — seizure without search warrant.
46-5-312. Return of property seized — right to possess.

Part 4 — Stop and Frisk

46-5-401. Investigative stop.
46-5-402. Stop and frisk.
46-5-403. Duration of stop.

Part 5 — Roadblocks

46-5-501. Repealed.
46-5-502. Authority to establish roadblocks.
46-5-503. Repealed.
46-5-504. Repealed.
46-5-505. Repealed.
46-5-506 through 46-5-509 reserved.
46-5-510. Establishing roadblock.

Chapter Cross-References

Search and seizure, Art. II, sec. 11, Mont. Const.

Part 1

Legality and Admissibility

Part Cross-References

Search of student rooms at university, 20-25-513.

Powers of Game Wardens — search and arrest, 87-1-506.

46-5-101. Searches and seizures — when authorized. A search of a person, object, or place may be made and evidence, contraband, and persons may be seized in accordance with Title 46 when a search is made:

(1) by the authority of a search warrant; or

(2) in accordance with recognized exceptions to the warrant requirement.

History: En. 95-701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-701; amd. Sec. 47, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence substituted "evidence, contraband, and persons" for "instruments, articles, or things" and near end substituted "Title 46" for "the provisions of this chapter"; deleted former (1) and (2) that read: "(1) as an incident to a lawful arrest;

(2) with the consent of the accused or of any other person who is lawfully in possession of the object or place to be searched or who is believed upon reasonable cause to be in such lawful possession by the person making the search"; in (1), before "search warrant", deleted "valid"; deleted (4) that read: "(4) under the authority and within the scope of a right of lawful inspection granted by law"; and inserted (2) concerning recognized exceptions to warrant requirement.

Cross-References

Unreasonable searches and seizures prohibited, Art. II, sec. 11, Mont. Const.

46-5-102. Scope of search incident to arrest. When a lawful arrest is effected, a peace officer may reasonably search the person arrested and the area within such person's immediate presence for the purpose of:

(1) protecting the officer from attack;

(2) preventing the person from escaping;

(3) discovering and seizing the fruits of the crime; or

(4) discovering and seizing any persons, instruments, articles, or things which may have been used in the commission of or which may constitute evidence of the offense.

History: En. 95-702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-702.

46-5-103. When search and seizure not illegal. (1) A search and seizure, whether with or without a warrant, may not be held to be illegal if:

(a) the defendant has disclaimed any right to or interest in the place or object searched or the evidence, contraband, or person seized;

(b) a right of the defendant has not been infringed by the search and seizure; or

(c) any irregularity in the proceedings has no effect on the substantial rights of the accused.

(2) Evidence, contraband, or persons lawfully seized are admissible as evidence in any prosecution or proceeding whether or not the prosecution or proceeding is for the offense in connection with which the search was originally made.

History: **En. 95-717 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-717; amd. Sec. 48, Ch. 800, L. 1991.**

Compiler's Comments

1991 Amendment: In (1)(a) substituted "evidence, contraband, or person" for "instruments, articles, or things"; inserted (2) concerning admissibility as evidence; and made minor changes in style.

46-5-104. Repealed. Sec. 263, Ch. 800, L. 1991.
History: **En. 95-718 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-718.**

Part 2

Search Warrants

46-5-201. Repealed. Sec. 263, Ch. 800, L. 1991.
History: **En. 95-703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-703; amd. Sec. 2, Ch. 116, L. 1979.**

46-5-202. Renumbered 46-5-221 by Code Commissioner, 1991.

46-5-203. Renumbered 46-5-224 by Code Commissioner, 1991.

46-5-204. Renumbered 46-5-310 by Code Commissioner, 1991.

46-5-205. Renumbered 46-5-226 by Code Commissioner, 1991.

46-5-206. Renumbered 46-5-227 by Code Commissioner, 1991.

46-5-207. Renumbered 46-5-225 by Code Commissioner, 1991.

46-5-208. Renumbered 46-5-228(1) by Code Commissioner, 1991.

46-5-209. Renumbered 46-5-228(2) by Code Commissioner, 1991.

46-5-210 and 46-5-211 reserved.

46-5-212. Pawnbroker to surrender stolen property. When a peace officer informs a pawnbroker or dealer who buys and sells secondhand merchandise that property pawned to him or purchased by him is stolen property, as defined in 45-2-101, the pawnbroker or dealer who buys and sells secondhand merchandise shall hold the property for 30 days and shall surrender the property to the peace officer upon service of a search warrant by a peace officer pursuant to 31-1-401 through 31-1-406.
History: **En. Sec. 2, Ch. 470, L. 1989.**

Cross-References

Theft by disposal of stolen property, 45-6-314.

46-5-213 through 46-5-219 reserved.

46-5-220. Authority to issue search warrant. (1) A peace officer, the city or county attorney, or the attorney general may apply for a search warrant.

(2) A search warrant may be issued by:

(a) a city or municipal court judge or justice of the peace within the judge's geographical jurisdiction; or

(b) a district court judge within this state.

History: En. Sec. 49, Ch. 800, L. 1991.

46-5-221. Grounds for search warrant. A judge shall issue a search warrant to a person upon application, in writing or by telephone, made under oath or affirmation, that:

(1) states facts sufficient to support probable cause to believe that an offense has been committed;

(2) states facts sufficient to support probable cause to believe that evidence, contraband, or persons connected with the offense may be found;

(3) particularly describes the place, object, or persons to be searched; and

(4) particularly describes who or what is to be seized.

History: En. 95-704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 7, Ch. 184, L. 1977; R.C.M. 1947, 95-704; amd. Sec. 3, Ch. 116, L. 1979; amd. Sec. 1, Ch. 339, L. 1979; amd. Sec. 50, Ch. 800, L. 1991; Sec. 46-5-202, MCA 1989; redes. 46-5-221 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In introductory clause, after "judge", substituted "shall" for "may" and after "affirmation" deleted "before the judge"; in (1), after "states", inserted "facts sufficient to support probable cause to believe"; at end of (2) substituted "support probable cause to believe that evidence, contraband, or persons connected with the offense may be found" for "show probable cause for issuance of the warrant"; in (3) substituted "object" for "things"; in (4) substituted "who or what is" for "the things"; and deleted former (2) through (4) that read: "(2) Whenever the application is made by telephone, the applicant's telephonic oath or affirmation is considered to have been made before the judge, and the sworn or affirmed telephonic testimony must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and transcribed verbatim, including the time and date of recording, as soon as possible thereafter.

(3) Whenever a law enforcement officer wishes to obtain a search warrant by telephone, he shall first contact the county attorney or a deputy county attorney. If the county attorney or deputy county attorney is convinced that a warrant is justified and that the circumstances require its immediate issuance, he shall telephone the judge and state that he is convinced that the warrant should be issued by telephone. The judge shall then telephone the officer at the number provided by the county attorney or deputy county attorney, and the officer shall make his application as provided in subsection (2). If the judge approves a warrant, the officer shall sign the warrant with his own name and the judge's name. A search warrant issued upon the telephonic request of a person other than the county attorney or a deputy county attorney is not valid unless the procedure provided for in this subsection is followed.

(4) A search warrant issued upon any telephonic request is invalid unless it is subsequently signed by the issuing judge or his successor"; and made minor changes in style.

Cross-References

Search warrants issuable for enforcement of liquor laws, 16-6-102.

Complaint against pawnbrokers or junk dealers, issuance and service of search warrant, 31-1-403, 31-1-404.

Penalty for procuring search warrant by false swearing, 45-7-202.

46-5-222. Search warrants issued by telephone. (1) Whenever the application for a search warrant is made by telephone, the applicant shall, in addition to the requirements contained in 46-5-221, state reasons to justify immediate issuance of a search warrant.

(2) All testimony given over the telephone that is intended to support an application for a search warrant must be given on oath or affirmation and must identify the person testifying. For the purpose of this section, the judge is authorized to administer an oath or affirmation by telephone.

(3) Sworn or affirmed testimony given over the telephone must be electronically recorded by the judge on a recording device in the custody of the judge when the application is made. The recording must be retained in the court records and must be transcribed verbatim as soon as possible after the application is made. The recording must include the time and date it was recorded.

(4) If the judge approves a warrant over the telephone, the peace officer serving the warrant shall sign the search warrant in the officer's own name and in the judge's name. The peace officer signing the judge's name shall initial the judge's name indicating the signature was authorized by the judge but signed by the officer.

(5) Any search warrant issued by telephone must be signed by the issuing judge or the judge's successor as soon as possible after it has been issued.

History: En. Sec. 51, Ch. 800, L. 1991.

46-5-223. To whom search warrant directed. A search warrant must be directed to a specific peace officer commanding the officer to search for and seize the evidence, contraband, or person designated in the warrant.

History: En. Sec. 52, Ch. 800, L. 1991.

46-5-224. What may be seized with search warrant. A warrant may be issued under this section to search for and seize any:

(1) evidence;

(2) contraband; or

(3) person for whose arrest there is probable cause, for whom there has been a warrant of arrest issued, or who is unlawfully restrained.

History: En. 95-705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-705; amd. Sec. 53, Ch. 800, L. 1991; Sec. 46-5-203, MCA 1989; redes. 46-5-224 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Substituted introductory clause that reads: "A warrant may be issued under this section to search for and seize any" for "A search warrant may authorize the seizure of the following"; inserted (1) listing "evidence"; deleted former (2) that read: "(2) any instruments, articles, or things which are the fruits of, have been used in the commission of, or may constitute evidence of any offense"; in (3) substituted present language concerning person subject to arrest for "any person who has been kidnapped in violation of the laws of this state or who has been kidnapped in another jurisdiction and is now concealed within this state"; and made minor changes in style.

46-5-225. When warrant may be served. The warrant may be served at any time of the day or night. The warrant must be served within 10 days from the time of issuance. Any warrant not served within 10 days is void and must be returned to the court or the judge issuing the warrant and identified as "not served".

History: En. 95-711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-711; amd. Sec. 59, Ch. 800, L. 1991; Sec. 46-5-207, MCA 1989; redes. 46-5-225 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In four places substituted "served" for "executed"; and made minor changes in style.

46-5-226. Service of search warrant. A search warrant must in all cases be served by the peace officer specifically named and by no other person except in aid of the officer when the officer is present and acting in its service.

History: En. 95-707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-707; amd. Sec. 54, Ch. 800, L. 1991; Sec. 46-5-205, MCA 1989; redes. 46-5-226 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: After "served by" substituted "the peace officer specifically named" for "any of the officers mentioned in its direction but", after "aid of the officer" deleted "on his requiring it", and at end substituted "service" for "execution"; and made minor changes in style.

46-5-227. Service and return of search warrant. Service of a search warrant is made by exhibiting the original warrant or a duplicate original warrant at the place or to the person to be searched. The officer taking property under the warrant shall give to the person from whom or from whose premises the property is taken a copy of the search warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. Failure to leave a copy and receipt may not render the property seized inadmissible at trial.

History: En. 95-708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-708; amd. Sec. 55, Ch. 800, L. 1991; Sec. 46-5-206, MCA 1989; redes. 46-5-227 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In second sentence, after "from whom", substituted "or from whose premises the property is taken" for "any instruments, articles, or things are seized" and at end substituted "property was taken" for "instruments, articles, or things were seized" and in last sentence substituted "property seized" for "evidence"; and made minor changes in style.

46-5-228. Procedures assisting in execution of service of search warrant. (1) All necessary and reasonable force may be used to serve a search warrant or to effect an entry into any building, property, or object to serve a search warrant.

(2) The person serving the search warrant may reasonably detain and search any person on the premises being searched at the time of the search:

(a) for self-protection; or

(b) to prevent the disposal or concealment of any evidence, contraband, or persons particularly described in the warrant.

History: (1)En. 95-709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-709; amd. Sec. 56, Ch. 800, L. 1991; Sec. 46-5-208, MCA 1989; redes. 46-5-228(1) by Code Commissioner, 1991; (2)En. 95-710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-710; amd. Sec. 57, Ch. 800, L. 1991; Sec. 46-5-209, MCA 1989; redes. 46-5-228(2) by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: (46-5-208) In two places substituted "serve" for "execute" and after "property, or" substituted "object" for "part thereof"; and made minor change in style.

(46-5-209) In (2), at beginning, deleted "In the execution of the warrant", after "person" substituted "serving" for "executing", and near end substituted "on the premises being searched" for "in the place"; in (2)(b) substituted "evidence, contraband, or persons" for "instruments, articles, or things"; and made minor changes in style.

Part 3

Procedure in Regard to Property Seized

46-5-301. Return. (1) A return must be made promptly and must be accompanied by a written inventory of any evidence or contraband taken, verified by the person serving the warrant. The return must be made before the judge who issued the warrant or, if the judge is absent or unavailable, before the nearest available judge.

(2) The judge shall, upon request, deliver a copy of the inventory and the order of custody or disposition to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(3) The judge shall enter an order providing for the custody or appropriate disposition of the evidence or contraband seized pending further proceedings.

History: En. 95-712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-712; amd. Sec. 58, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning of first sentence, substituted "A return must be made promptly" for "The return of the warrant and all instruments, articles, and things seized shall be made promptly before the judge who issued the warrant or, if he is absent or unavailable, before the nearest available judge", near middle substituted "evidence or contraband" for "property", and near end of sentence substituted "serving" for "executing" and inserted second sentence concerning return of the warrant; in (2), after "inventory", inserted "and the order of custody or disposition"; inserted (3) concerning custody or disposition of evidence or contraband; and made minor changes in style.

46-5-302. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-713.

46-5-303. Renumbered 46-5-311 by Code Commissioner, 1991.

46-5-304. Renumbered 46-5-312 by Code Commissioner, 1991.

46-5-305. Disposition of unclaimed property. If property seized as evidence is not claimed within 6 months of completion of the case for which it was seized, it must be disposed of pursuant to the provisions of 46-5-306 through 46-5-309.

History: En. 95-716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-716; amd. Sec. 4, Ch. 116, L. 1979; amd. Sec. 5, Ch. 348, L. 1989.

Cross-References

Sale of attached property, Title 27, ch. 18, part 8.

46-5-306. Purpose. The purpose of 46-5-306 through 46-5-309 is to provide a procedure by which physical evidence in criminal cases may be destroyed or appropriated for law enforcement use when prosecutions have been completed and no further legal proceeding is contemplated or when it does not appear that criminal charges will be initiated.

History: En. Sec. 1, Ch. 348, L. 1989.

46-5-307. Petition for destruction, disposal, or use of evidence. (1) The prosecutor may file a petition with the court alleging that there exist certain items held as evidence either by the law enforcement agency or the court and that the items no longer have any evidentiary value. The petition must include:

(a) the name and title of petitioner;

(b) the items of evidence sought to be destroyed, disposed of, or used, including a specific description of each that may be attached to the petition by separate inventory;

(c) when the items were seized;

(d) whether the items constitute contraband, which for the purposes of 46-5-306 through 46-5-309 means any property that is unlawful to produce or possess;

(e) whether the items relate to a filed case and, if so, the court and cause number of the case and its procedural status;

(f) whether, in those instances in which the items are not contraband, an effort has been made to return the items to the apparent owner and the results of such effort;

(g) an allegation to the effect that any criminal prosecutions involving the items of evidence have been completed and no appeals are pending or that no criminal charges have been filed or are presently contemplated; and

(h) the petitioner's intentions relative to disposition of the items.

(2) If the petition requests the destruction or use of contraband, it must describe how destruction is to be accomplished or how the contraband has training or law enforcement value and its contemplated use by a law enforcement agency.

History: En. Sec. 2, Ch. 348, L. 1989.

46-5-308. Order. (1) The court may enter an order providing for the destruction or disposition of the evidence. A proposed order must be presented by the petitioner to the court and may include:

(a) authorization to destroy all contraband listed in the petition, the method of destruction, and the time within which such destruction must be accomplished;

(b) if certain contraband is requested by the petitioner for training or law enforcement purposes, authorization to use the items and a description of each;

(c) if the petition requests training or law enforcement use of noncontraband items, authorization to retain the items by the law enforcement agency and a description of the items;

(d) if the evidence is money and the owner cannot be ascertained and no civil forfeiture action is pending, authorization to deposit the money to the appropriate city, county, or state drug forfeiture fund;

(e) if the petition requests, authorization to sell noncontraband property at public sale or auction and deposit the proceeds to the appropriate city, county, or state drug forfeiture fund; or

(f) authorization to destroy all items not otherwise provided for.

(2) The order must specify the time period in which destruction or sale must occur. Within 10 days following the destruction or sale, a return must

be filed with the court, listing the property destroyed or sold and the date and method of disposition.

History: En. Sec. 3, Ch. 348, L. 1989.

Cross-References

Drug forfeiture funds — disposition, 44-12-206.

46-5-309. Applicability of other statutes. The provisions of Title 70, chapter 9, relating to the disposition of unclaimed or abandoned property, do not apply to actions filed pursuant to 46-5-306 through 46-5-309.

History: En. Sec. 4, Ch. 348, L. 1989.

46-5-310. Filing of return. (1) The application on which the warrant is issued must be retained by the judge but is not required to be filed with the clerk of the court or with the court, if there is no clerk, until the warrant has been served or has been returned "not served".

(2) The judge before whom the warrant is returned shall attach to the warrant a copy of the return, the inventory, and all other papers in connection with the warrant and shall file them with the issuing court.

History: En. 95-706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-706; amd. Sec. 60, Ch. 800, L. 1991; Sec. 46-5-204, MCA 1989; redes. 46-5-310 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1), in two places near end, substituted "served" for "executed"; inserted (2) concerning attachments to and filing of warrant; and made minor changes in style.

46-5-311. Custody and disposition — seizure without search warrant. (1) Evidence or contraband lawfully seized without a warrant may be retained in the custody of the officer making the seizure for a time sufficient to complete an investigation.

(2) Notice of the seizure and a receipt for the evidence or contraband seized must be given to the person from whose possession the evidence or contraband was taken and to the owner of the evidence or contraband if the owner is reasonably ascertainable. The failure to give a receipt may not render the evidence seized inadmissible at trial.

History: En. 95-714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-714; amd. Sec. 61, Ch. 800, L. 1991; Sec. 46-5-303, MCA 1989; redes. 46-5-311 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Inserted (1) concerning custody of evidence or contraband during an investigation; in (2) substituted first sentence concerning notice of and receipt for evidence or contraband seized for "Any peace officer seizing any instruments, articles, or things must give a receipt to the person from whose possession they are taken"; deleted former (2) and (3) that read: "(2) If an arrest has been made, all instruments, articles, or things seized on a search without warrant shall be delivered to the judge before whom the person arrested is taken and thereafter handled and disposed of in accordance with 46-5-301, 46-5-302, and 46-5-304. If the person arrested is released without a charge being preferred against him, all instruments, articles, or things seized from him other than contraband shall be returned to him upon release.

(3) If no arrest has been made, such instruments, articles, or things may be retained in the custody of the officer making the seizure for a time sufficient for investigation of the supposed crime, after which they must be delivered to the proper judge for disposition in accordance with 46-5-301, 46-5-302, and 46-5-304 or returned to the person from whom they were taken"; and made minor changes in style.

Cross-References

Return of crime victim's property, 46-24-206.

46-5-312. Return of property seized — right to possess. (1) A person claiming the right to possession of property seized as evidence may apply to the judge for its return. The judge shall give written notice as the judge considers adequate to the prosecutor and all persons who have or may have an interest in the property and shall hold a hearing to determine the right to possession.

(2) If the right to possession is established, the judge shall order the property, other than contraband, returned if:

(a) the property is not needed as evidence;

(b) the property is needed and satisfactory arrangements can be made for its return for subsequent use as evidence; or

(c) all proceedings in which the property might be required have been completed.

History: En. 95-715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-715; amd. Sec. 62, Ch. 800, L. 1991; Sec. 46-5-304, MCA 1989; redes. 46-5-312 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence after "judge", deleted "to whom it has been delivered" and in second sentence substituted "prosecutor" for "county attorney" and at end substituted "determine the right to possession" for "hear all claims to its true ownership"; in (2), after "possession is", substituted "established, the judge" for "proved to the judge's satisfaction"; and made minor changes in style.

Part 4

Stop and Frisk

46-5-401. Investigative stop. In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person, a peace officer may stop any person or vehicle that is observed in circumstances that create a particularized suspicion that the person or occupant of the vehicle has committed, is committing, or is about to commit an offense.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(1) thru (3); amd. Sec. 42, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning inserted "In order to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person", after "any person" inserted "or vehicle", after "circumstances that" substituted "create a particularized suspicion" for "give him reasonable cause to suspect", after "the person" inserted "or occupant of the vehicle", and after "offense" deleted "involving the use or attempted use of force against a person or theft, damage, or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person"; and deleted (2) and (3) that read: "(2) A peace officer may stop any person he finds near the scene of an offense that he has reasonable cause to suspect has just been committed if:

(a) he has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that he has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property;

(b) he has reasonable cause to suspect the person committed the felony; and

(c) (i) the stop is reasonably necessary to obtain or verify the person's identity to determine whether to arrest the person for the felony; or

(ii) the peace officer has reasonable cause to suspect that the person was present at the scene of the offense, and the stop is reasonably necessary to obtain or verify the person's identity"; and made minor changes in style.

46-5-402. Stop and frisk. A peace officer who has lawfully stopped a person under 46-5-401 or this section:

(1) may frisk the person and take other reasonably necessary steps for protection if the officer has reasonable cause to suspect that the person is armed and presently dangerous to the officer or another person present;

(2) may take possession of any object that is discovered during the course of the frisk if the officer has probable cause to believe the object is a deadly weapon;

(3) may demand the name and present address of the person; and

(4) shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that the officer is a peace officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation, the person will be released if not arrested.

History: En. 95-719 by Sec. 4, Ch. 513, L. 1973; amd. Sec. 8, Ch. 184, L. 1977; R.C.M. 1947, 95-719(4) thru (7); amd. Sec. 43, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At end of introductory clause substituted "46-5-401 or this section" for "this part"; deleted former (4) that read: "(4) After the authorized purpose of the stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person"; and made minor changes in style.

46-5-403. Duration of stop. A stop authorized by 46-5-401 or 46-6-411 may not last longer than is necessary to effectuate the purpose of the stop.

History: En. Sec. 44, Ch. 800, L. 1991.

Part 5

Roadblocks

46-5-501. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(a).

46-5-502. Authority to establish roadblocks. Any law enforcement agency of this state is authorized to establish, within its jurisdiction, temporary roadblocks on the highways of this state for the purpose of apprehending persons wanted for violation of the laws of this state, of any other state, or of the United States who are using the highways of this state, identifying drivers, or checking for driver's licenses, vehicle registration, and insurance.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(b); amd. Sec. 45, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "Any law enforcement agency of this state is authorized to establish within its jurisdiction" for "The duly elected or appointed law enforcement officers of this state and their deputies are hereby authorized to establish, in their respective jurisdictions or in other jurisdictions within the state" and at end inserted "vehicle registration, and insurance"; and made minor changes in style.

46-5-503. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(c).

46-5-504. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(d).

46-5-505. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-618 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 18, L. 1971; R.C.M. 1947, 95-618(e).

46-5-506 through 46-5-509 reserved.

46-5-510. Establishing roadblock. A written plan for establishing a roadblock must be designed by supervisory officers within the law enforcement agency to ensure motorist safety, minimize motorist inconvenience, and prevent the arbitrary selection of vehicles by providing a schedule for the selection of vehicles to be stopped.

History: En. Sec. 46, Ch. 800, L. 1991.

CHAPTER 6

ARREST

Part 1 — General Provisions

46-6-101. Repealed.
46-6-102. Persons exempt from arrest.
46-6-103. Repealed.
46-6-104. Method of arrest.
46-6-105. Time of making arrest.
46-6-106. Renumbered 46-6-312 by Code Commissioner, 1991.

Part 2 — Arrest With a Warrant

46-6-201. Issuance of arrest warrant upon complaint.
46-6-202. Renumbered 46-6-214 and 46-6-215 by Code Commissioner, 1991.
46-6-203. Renumbered 46-6-216 by Code Commissioner, 1991.
46-6-204. Minor irregularities in warrant.
46-6-205 through 46-6-209 reserved.
46-6-210. Arrest by peace officer.
46-6-211. Issuance of arrest warrant or summons.
46-6-212. Failure to appear following summons or notice to appear.

46-6-213. Form and content of summons.
46-6-214. Form and content of arrest warrant.
46-6-215. Execution of warrant.
46-6-216. Manner of arrest with warrant.

Part 3 — Warrantless Arrest and Notice to Appear

46-6-301. Repealed.
46-6-302. Renumbered 46-6-213 by Code Commissioner, 1991.
46-6-303. Renumbered 46-6-212(1) by Code Commissioner, 1991.
46-6-304. Renumbered 46-6-212(2) by Code Commissioner, 1991.
46-6-305 through 46-6-309 reserved.
46-6-310. Notice to appear.
46-6-311. Basis for arrest without warrant.
46-6-312. Manner of arrest without warrant.
46-6-313. Release.

Part 4 — Arrest by a Peace Officer

46-6-401. Renumbered 46-6-210 by Code Commissioner, 1991.
46-6-402. Assisting a peace officer.
46-6-403. Renumbered 46-6-313 by Code Commissioner, 1991.
46-6-404. Renumbered 46-6-310 by Code Commissioner, 1991.
46-6-405 through 46-6-410 reserved.
46-6-411. Assisting officer of another state.
46-6-412. Arrest by officer of the United States customs service or immigration and naturalization service.
46-6-413 through 46-6-420 reserved.
46-6-421. Renumbered 46-6-601 by Code Commissioner, 1991.
46-6-422. Renumbered 46-6-602 by Code Commissioner, 1991.

Part 5 — Arrest by a Private Person

46-6-501. Repealed.
46-6-502. Arrest by private person.
46-6-503. Repealed.
46-6-504. Repealed.
46-6-505. Custody by peace officer.

Part 6 — Domestic Violence Provisions

46-6-601. Written report when no arrest made in domestic violence situation.
46-6-602. Notice of rights to victim upon arrest in domestic violence situation.

Chapter Cross-References

Power of County Commission — rewards for felons, 7-32-2301.

Power of City or Town Council — arrests, 7-32-4301.

Escape from custody — use of force to prevent, 45-3-106.

Use of force in resisting arrest, 45-3-108.

Escape from custody — definition, 45-7-306.

Part 1

General Provisions

46-6-101. Repealed. Sec. 263, Ch. 800, L. 1991.

History: **En. 95-601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-601.**

46-6-102. Persons exempt from arrest. (1) Electors shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at election and in going to and returning from the same.

(2) Senators and representatives shall in all cases except felony or breach of the peace be privileged from arrest during the sessions of the state legislature and in going to and returning from the same.

(3) The militia shall in all cases except treason, felony, or breach of the peace be privileged from arrest during their attendance at musters and election and in going to and returning from the same.

(4) Judges, attorneys, clerks, sheriffs, and other court officers shall be privileged from arrest while attending court and while going to and returning from court.

History: **En. 95-616 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-616.**

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

Immunity of electors at polling places, Art. IV, sec. 6, Mont. Const.

Immunity of legislators from arrest, Art. V, sec. 8, Mont. Const.

Exemption from arrest and service of process, 46-15-120.

46-6-103. Repealed. Sec. 263, Ch. 800, L. 1991.

History: **En. 95-617 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-617.**

46-6-104. Method of arrest. (1) An arrest is made by an actual restraint of the person to be arrested or by the person's submission to the custody of the person making the arrest.

(2) All necessary and reasonable force may be used in making an arrest, but the person arrested may not be subject to any greater restraint than is necessary to hold or detain that person.

(3) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

History: **En. 95-602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-602; amd. Sec. 34, Ch. 800, L. 1991.**

Compiler's Comments

1991 Amendment: Made minor changes in style.

46-6-105. Time of making arrest. An arrest may be made at any time of the day or night, except that a person may not be arrested in the person's home or private dwelling place at night for a misdemeanor committed at some other time and place unless upon the direction of a judge endorsed upon an arrest warrant. However, a person may be arrested in the person's home or private dwelling at night if the person is being arrested pursuant to 46-6-311 for the offense of domestic abuse.

History: **En. 95-607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-607; amd. Sec. 4, Ch. 700, L. 1985; amd. Sec. 35, Ch. 800, L. 1991.**

Compiler's Comments

1991 Amendment: Near beginning of first sentence, after "made", deleted "on any day and" and near end substituted "judge" for "magistrate" and in second sentence substituted "46-6-311" for "46-6-401(2)" and after "abuse" deleted "or aggravated assault against a family member or household member. A summons of a peace officer to the home or private dwelling by a family or household member constitutes an exigent circumstance for making an arrest pursuant to 46-6-401(2)"; and made minor changes in style.

Cross-References

Criminal offense of domestic abuse, 45-5-206.

46-6-106. Renumbered 46-6-312 by Code Commissioner, 1991.

Part 2

Arrest With a Warrant

Part Cross-References

Criminal process on United States land, Title 2, ch. 1, part 2; 2-1-307.

46-6-201. Issuance of arrest warrant upon complaint. (1) A complaint, as the basis of an arrest warrant, shall be in writing.

(2) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine upon oath the complainant and may also examine any witnesses.

(3) If it appears from the contents of the complaint and the examination of the complainant and other witnesses, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. The court, in its discretion, may issue a summons instead of a warrant. Upon the request of the county attorney, the court shall issue a summons instead of a warrant. More than one warrant or summons may issue on the same complaint.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(1) thru (3).

Cross-References

Issuance of warrant upon failure to comply with conditions of bail, 46-9-505.

46-6-202. Renumbered 46-6-214 and 46-6-215 by Code Commissioner, 1991.

46-6-203. Renumbered 46-6-216 by Code Commissioner, 1991.

46-6-204. Minor irregularities in warrant. No warrant of arrest shall be dismissed nor shall any person in custody for an offense be discharged from such custody because of technical irregularities not affecting the substantial rights of the accused.

History: En. 95-605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-605.

46-6-205 through 46-6-209 reserved.

46-6-210. Arrest by peace officer. A peace officer may arrest a person when the officer has a warrant commanding that the person be arrested or when the officer believes on reasonable grounds:

(1) that a warrant for the person's arrest has been issued in this state, except that a warrant for violation of a city ordinance may not be acted upon unless the person is located within the limits of the city in which the violation is alleged to have occurred; or

(2) that a felony warrant for the person's arrest has been issued in another jurisdiction.

History: En. 95-608 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-608; amd. Sec. 5, Ch. 700, L. 1985; amd. Sec. 28, Ch. 800, L. 1991; Sec. 46-6-401, MCA 1989; redes. 46-6-210 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: At end of (1) inserted "except that a warrant for violation of a city ordinance may not be acted upon unless the person is located within the limits of the city in which the violation is alleged to have occurred"; deleted (1)(d) that read: "(d) he believes on reasonable grounds that the person is committing an offense or that the person has committed an offense and the existing circumstances require his immediate arrest"; deleted former (2) that read: "(2) A peace officer may arrest a person anywhere, including his place of residence, if the peace officer has probable cause to believe the person is committing or has committed domestic abuse or aggravated assault against a family member or household member even though the offense did not take place in the presence of the peace officer. A summons of a peace officer to a place of residence by a family or household member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim"; and made minor changes in style.

Cross-References

Reserve and auxiliary officers, 7-32-201.

Criminal offense of domestic abuse, 45-5-206.

46-6-211. Issuance of arrest warrant or summons. (1) Upon the filing of a charge, the court may issue a summons or an arrest warrant as provided in 46-11-110 and 46-11-201. A summons may be issued to a corporation upon the filing of a charge against it. More than one warrant or summons may be issued on the same charge.

(2) A summons may be served personally or by first-class mail.

History: En. Sec. 29, Ch. 800, L. 1991.

46-6-212. Failure to appear following summons or notice to appear. (1) If, after the issuance of a summons or notice to appear, the judge becomes satisfied that the person has not appeared or will not appear as commanded, the judge may at once issue an arrest warrant.

(2) If after being summoned the corporation does not appear, a plea of not guilty must be entered in accordance with 46-12-204 and the matter must proceed to trial and judgment without further process.

History: (1)En. 95-613 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-613; amd. Sec. 26, Ch. 800, L. 1991; Sec. 46-6-303, MCA 1989; redes. 46-6-212(1) by Code Commissioner, 1991; (2)En. 95-615 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-615; amd. Sec. 27, Ch. 800, L. 1991; Sec. 46-6-304, MCA 1989; redes. 46-6-212(2) by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: (46-6-303) Deleted former first sentence that read: "Upon failure of the person summoned to appear, the magistrate shall issue a warrant of arrest", in first sentence, after "summons", inserted "or notice to appear", before "becomes" substituted "judge" for "magistrate", and after "person" substituted "has not appeared or" for "summoned"; and made minor changes in style.

(46-6-304) Deleted former (1) and (2) that read: "(1) Upon a charge filed against a corporation for the commission of an offense, the court shall issue a summons setting forth the nature of the offense and commanding the corporation to appear before the court at a certain time and place.

(2) The summons for the appearance of a corporation may be served in the manner provided for service of summons upon a corporation in a civil action"; after "entered" substituted "in accordance with 46-12-204 and the matter must" for "by the court having jurisdiction to try the offense for which the summons was issued and such court shall"; and made minor change in style.

46-6-213. Form and content of summons. (1) When authorized to issue an arrest warrant, a court may instead issue a summons.

(2) A summons may be served personally or by first-class mail.

(3) The summons must:

(a) be in writing in the name of the state of Montana or in the name of the municipality if the violation of a municipal ordinance is charged;

(b) state the name of the person summoned and that person's address, if known;

(c) set forth the nature of the offense;

(d) state the date when issued and the municipality or county where issued;

(e) be signed by the judge of the court with the title of office noted; and

(f) command the person to appear before a court at a certain time and place.

(4) The summons must plainly state that, upon failure to appear following the service of summons, an arrest warrant must be issued immediately or, if the service is made to a corporation, that a plea of not guilty will be entered.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(b); amd. Sec. 25, Ch. 800, L. 1991; Sec. 46-6-302, MCA 1989; redes. 46-6-213 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Inserted (1) concerning issuance of summons instead of warrant; inserted (2) concerning service of summons; in (3)(a), after "Montana", inserted "or in the name of the municipality if the violation of a municipal ordinance is charged"; inserted (4) requiring issuance of arrest warrant for failure to appear; and made minor changes in style.

46-6-214. Form and content of arrest warrant. (1) An arrest warrant must:

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

(c) command that the person against whom the complaint was made be arrested and brought before the nearest or most accessible court for an initial appearance;

(d) specify the name of the person to be arrested or, if that person's name is unknown, designate the person by any name or description by which the person can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of office noted.

(2) The arrest warrant may specify the amount of bail.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(4) thru (6); amd. Sec. 30, Ch. 800, L. 1991; Sec. 46-6-202(1), (2), MCA 1989; redes. 46-6-214 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1)(c), after "before", deleted "the court issuing the warrant or, if the judge is absent or unable to act, before" and after "court" substituted "for an initial appearance" for "in the same county or the adjoining county"; deleted (4) that read: "(4) If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made or the adjoining county"; and made minor changes in style.

46-6-215. Execution of warrant. An arrest warrant may be directed to all peace officers in the state. It must be executed by a peace officer and may be executed in any county of the state. Arrest warrants issued for the violation of city ordinances may not be executed outside the city limits, except as otherwise provided by law.

History: En. 95-603 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 6, Ch. 184, L. 1977; R.C.M. 1947, 95-603(4) thru (6); amd. Sec. 30, Ch. 800, L. 1991; Sec. 46-6-202(3), MCA 1989; redes. 46-6-215 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Near beginning, after "warrant", substituted "may" for "shall" and at end substituted "by law" for "by 7-32-4301 and 7-32-4302"; and made minor changes in style.

46-6-216. Manner of arrest with warrant. (1) When making an arrest pursuant to a warrant, a peace officer shall inform the person to be arrested of the officer's authority, the intention to arrest that person, the cause of the arrest, and the fact that a warrant has been issued for that person's arrest, except:

(a) when the person flees or forcibly resists before the peace officer has an opportunity to inform the person; or

(b) when the giving of the information will imperil the arrest.

(2) The peace officer need not have possession of the warrant at the time of the arrest, but after the arrest, the warrant must be shown to the person arrested as soon as practicable if the person requests.

History: En. 95-604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-604; amd. Sec. 5, Ch. 116, L. 1979; amd. Sec. 31, Ch. 800, L. 1991; Sec. 46-6-203, MCA 1989; redes. 46-6-216 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Part 3

Warrantless Arrest and Notice to Appear

46-6-301. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-612 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-612(a), (c).

46-6-302. Renumbered 46-6-213 by Code Commissioner, 1991.

46-6-303. Renumbered 46-6-212(1) by Code Commissioner, 1991.

46-6-304. Renumbered 46-6-212(2) by Code Commissioner, 1991.

46-6-305 through 46-6-309 reserved.

46-6-310. Notice to appear. (1) Whenever a peace officer is authorized to arrest a person without a warrant, the officer may instead issue the person a notice to appear.

(2) The notice must:

(a) be in writing;

(b) state the person's name and address, if known;

(c) set forth the nature of the offense;

(d) be signed by the issuing officer; and

(e) direct the person to appear before a court at a certain time and place.

(3) Upon failure of the person to appear, a summons or arrest warrant may be issued.

History: En. 95-614 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-614; amd. Sec. 24, Ch. 800, L. 1991; Sec. 46-6-404, MCA 1989; redes. 46-6-310 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

46-6-311. Basis for arrest without warrant. (1) A peace officer may arrest a person when no warrant has been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a family member or household member constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim.

History: En. Sec. 32, Ch. 800, L. 1991.

46-6-312. Manner of arrest without warrant. A peace officer or person making an arrest without a warrant shall inform the person to be arrested of the officer's authority, of the intention to arrest that person, and of the cause of the arrest, except when the person to be arrested is actually engaged in the commission of or in an attempt to commit an offense or is pursued immediately after its commission, after an escape, or when the giving of the information will imperil the arrest.

History: En. 95-606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-606; amd. Sec. 33, Ch. 800, L. 1991; Sec. 46-6-106, MCA 1989; redes. 46-6-312 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Cross-References

Arrest of accused without warrant, 46-30-301.

46-6-313. Release. When no warrant has been issued, a peace officer having custody of a person arrested may release the arrested person without requiring that person to appear before a court when the officer is satisfied that there are insufficient grounds to commence prosecution.

History: En. 95-610 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-610; amd. Sec. 37, Ch. 800, L. 1991; Sec. 46-6-403, MCA 1989; redes. 46-6-313 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: At end substituted "to commence prosecution" for "for criminal complaint against the person arrested"; and made minor changes in style.

Part 4

Arrest by a Peace Officer

Part Cross-References

Duty of Police Chief to arrest, 7-32-4105.

Offenses for which patrol officers can make arrests, 44-1-1001.

Powers of Game Wardens — search and arrest, 87-1-506.

46-6-401. Renumbered 46-6-210 by Code Commissioner, 1991.

46-6-402. Assisting a peace officer. (1) A peace officer making a lawful arrest may command the aid of persons 18 years of age or older.

(2) A person commanded to aid a peace officer in making an arrest:

(a) has the same authority to arrest as that officer; and

(b) is not civilly liable for any reasonable conduct in aid of the officer.

History: En. 95-609 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 60, Ch. 535, L. 1975; R.C.M. 1947, 95-609; amd. Sec. 38, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At end of (2) inserted "in making an arrest"; and made minor changes in style.

Cross-References

Failure to aid a peace officer, 45-7-304.

46-6-403. Renumbered 46-6-313 by Code Commissioner, 1991.

46-6-404. Renumbered 46-6-310 by Code Commissioner, 1991.

46-6-405 through 46-6-410 reserved.

46-6-411. Assisting officer of another state. (1) Any peace officer of another state, of the United States, or of the District of Columbia who enters this state in close pursuit of a person in order to arrest the person has the same authority to arrest and hold the person in custody as peace officers of this state have to arrest and hold in custody a person on the ground that the person has committed a crime in this state.

(2) If an arrest is made in this state by an officer of another state, of the United States, or of the District of Columbia, the officer shall without unnecessary delay take the arrested person before a judge of a court of record, who shall conduct a hearing for the sole purpose of determining if the arrest was in accordance with the provisions of subsection (1) and not for the purpose of determining the guilt or innocence of the arrested person.

(3) If the judge determines that the arrest was in accordance with subsection (1), the judge shall commit the arrested person to the custody of the officer making the arrest, who shall without unnecessary delay take the arrested person to the state from which that person fled. If the judge determines that the arrest was unlawful, the judge shall discharge the person arrested.

(4) This section may not be construed to make unlawful any arrest in this state that would otherwise be lawful.

History: En. 95-619 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-619(part); amd. Sec. 39, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "United States", inserted "or of the District of Columbia" and after "pursuit" deleted "and continues within this state in such close pursuit"; in (2), after "state", substituted "of the United States, or of the District of Columbia" for "in accordance with the provisions of subsection (1)"; deleted former (4) and (5) that read: "(4) For the purpose of this section, the word "state" shall include the District of Columbia.

(5) This section may be cited as the "Uniform Act on Close Pursuit""; and made minor changes in style.

46-6-412. Arrest by officer of the United States customs service or immigration and naturalization service. An officer of the United States customs service or immigration and naturalization service may make an arrest without a warrant if the officer is on duty and one or more of the following situations exist:

(1) A person commits or attempts to commit an offense in the officer's presence.

(2) The officer believes on reasonable grounds that the person is committing an offense or that the person committed an offense and the circumstances require his immediate arrest.

(3) The officer believes on reasonable grounds that a warrant for the person's arrest has been issued in this state.

(4) The officer believes on reasonable grounds that a felony warrant for the person's arrest has been issued in another jurisdiction.

History: En. Sec. 1, Ch. 107, L. 1983.

Cross-References

Sovereignty and jurisdiction of the state, 2-1-102.

46-6-413 through 46-6-420 reserved.

46-6-421. Renumbered 46-6-601 by Code Commissioner, 1991.

46-6-422. Renumbered 46-6-602 by Code Commissioner, 1991.

Part 5

Arrest by a Private Person

46-6-501. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-611.1 by Sec. 1, Ch. 274, L. 1974; R.C.M. 1947, 95-611.1.

46-6-502. Arrest by private person. (1) A private person may arrest another when there is probable cause to believe that the person is committing or has committed an offense and the existing circumstances require the person's immediate arrest.

(2) A private person making an arrest shall immediately notify the nearest available law enforcement agency or peace officer and give custody of the person arrested to the officer or agency.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part); amd. Sec. 40, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Substituted present language regarding arrest by private person for former text that read: "A private person may arrest another when:

(1) he believes on reasonable grounds that an offense is begin committed or attempted in his presence;

(2) a felony has in fact been committed and he believes on reasonable grounds that the person arrested has committed it; or

(3) he is a merchant, as defined in 30-11-301, and has probable cause to believe the other is shoplifting in the merchant's store".

Cross-References

Limitation on arrest authority of auxiliary officer, 7-32-233.

46-6-503. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-611 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 274, L. 1974; R.C.M. 1947, 95-611(part).

46-6-504. Repealed. Sec. 1, Ch. 205, L. 1987.

History: En. 95-611.2 by Sec. 2, Ch. 274, L. 1974; R.C.M. 1947, 95-611.2.

46-6-505. Custody by peace officer. A peace officer who, pursuant to law, takes custody of a person arrested by a private citizen shall proceed in accordance with 46-6-104 and 46-6-312 and as otherwise provided by law.

History: En. Sec. 41, Ch. 800, L. 1991.

Part 6

Domestic Violence Provisions

46-6-601. Written report when no arrest made in domestic violence situation. When a peace officer is called to the scene of a reported incident of domestic violence but does not make an arrest, the peace officer shall file a written report with the officer commanding the law enforcement agency employing the peace officer, setting forth the reason or reasons for the decision.

History: En. Sec. 2, Ch. 700, L. 1985; amd. Sec. 36, Ch. 800, L. 1991; Sec. 46-6-421, MCA 1989; redes. 46-6-601 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Cross-References

Criminal offense of domestic abuse, 45-5-206.

46-6-602. Notice of rights to victim upon arrest in domestic violence situation. Whenever a peace officer arrests a person for domestic abuse, as defined in 45-5-206, if the victim is present, the officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

(1) an order restraining your abuser from abusing you;

(2) an order directing your abuser to leave your household;

(3) an order preventing your abuser from transferring any property except in the usual course of business;

(4) an order awarding you or the other parent custody of or visitation with a minor child or children;

(5) an order restraining your abuser from molesting or interfering with minor children in your custody; or

(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so".

History: **En. Sec. 3, Ch. 700, L. 1985; Sec. 46-6-422, MCA 1989; redes. 46-6-602 by Code Commissioner, 1991.**

CHAPTER 7

INITIAL APPEARANCE OF ARRESTED PERSON

Part 1 — General Provisions

46-7-101. Appearance of arrested person — use of two-way electronic audio-video communication.
46-7-102. Duty of court.
46-7-103. Renumbered 46-10-105 by Code Commissioner, 1991.

Part 1

General Provisions

46-7-101. Appearance of arrested person — use of two-way electronic audio-video communication. (1) A person arrested, whether with or without a warrant, must be taken without unnecessary delay before the nearest and most accessible judge for an initial appearance.

(2) A defendant's initial appearance before a judge may, in the discretion of the court, be satisfied either by the defendant's physical appearance before

the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other and so that the defendant and his counsel, if any, can communicate privately. A judge may order a defendant's physical appearance in court for an initial appearance hearing.

History: En. 95-901 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-901; amd. Sec. 1, Ch. 710, L. 1991; amd. Sec. 87, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 710 inserted (2) allowing satisfaction of requirement of initial appearance of defendant by two-way electronic audio-video communication; and made minor changes in style.

Chapter 800 substituted present language concerning taking arrested person before judge for initial appearance for former text that read: "(1) Any person making an arrest under a warrant shall take the arrested person without unnecessary delay before the judge issuing the warrant or, if he is absent or unable to act, before the nearest or most accessible judge of the same county. If an arrest is made in a county other than the one in which the warrant was issued, the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made.

(2) Any person making an arrest without a warrant shall take the arrested person without unnecessary delay before the nearest or most accessible judge in the same county, and a complaint stating the charges against the arrested person shall be filed forthwith".

46-7-102. Duty of court. (1) The judge shall inform the defendant:

(a) of the charge or charges against the defendant;

(b) of the defendant's right to counsel;

(c) of the defendant's right to have counsel assigned by a court of record in accordance with the provisions of 46-8-101;

(d) of the general circumstances under which the defendant may obtain pretrial release;

(e) of the defendant's right to refuse to make a statement and the fact that any statement made by the defendant may be offered in evidence at the defendant's trial; and

(f) of the defendant's right to a judicial determination of whether probable cause exists if the charge is made by a complaint alleging the commission of a felony.

(2) The judge shall admit the defendant to bail as provided by law.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part); amd. Sec. 88, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (1)(d) concerning general circumstances for pretrial release; inserted (1)(f) concerning probable cause determination; at end of (2) substituted "as provided by law" for "in accordance with the provisions of this title"; and made minor changes in style.

Cross-References

Bail, Art. II, sec. 21, Mont. Const.

Rights of accused, Art. II, sec. 24, Mont. Const.

Right to counsel, 46-8-101.

Bail provisions, Title 46, ch. 9.

Court to advise defendant of rights, 46-12-210.

Right to counsel — sentencing hearing, 46-18-223.

Right to counsel — parole hearing, 46-23-204.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-7-103. Renumbered 46-10-105 by Code Commissioner, 1991.

CHAPTER 8

RIGHT TO COUNSEL

Part 1 — Extent of Right—Indigency Repayment of Costs

46-8-101. Right to counsel.
46-8-102. Waiver of counsel.
46-8-103. Duration of appointment.
46-8-104. Appointment after trial.
46-8-105 through 46-8-110 reserved.
46-8-111. Eligibility for court-appointed counsel — determination of indigence.
46-8-112. Repealed.
46-8-113. Payment for court-appointed counsel by defendant.
46-8-114. Time and method of payment.
46-8-115. Effect of nonpayment.

Part 2 — Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel.
46-8-202. Public defender's office.
46-8-203 through 46-8-209 reserved.
46-8-210. Short title.
46-8-211. Office of appellate defender — appellate defender — hiring — dismissal — staff.
46-8-212. Appellate defender — qualifications — duties.
46-8-213. Appellate defender — classification — salary — expenses.

Chapter Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Part 1

Extent of Right — Indigency Repayment of Costs

46-8-101. Right to counsel. (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel, and must be asked if the aid of counsel is desired.

(2) If the defendant desires counsel, is unable to employ counsel, and is entitled to have counsel assigned, the court shall assign counsel to the defendant without unnecessary delay.

(3) The defendant, if unable to employ counsel, is entitled to have counsel assigned if:

(a) the offense charged is a felony;

(b) the offense charged is a misdemeanor and the court desires to retain imprisonment as a sentencing option; or

(c) the interests of justice would be served by assignment.

History: En. 95-1001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1001; amd. Sec. 1, Ch. 415, L. 1981; amd. Sec. 63, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, substituted "During the initial appearance before the court, every defendant must be informed of the right to have counsel" for "Every defendant brought before the court must be informed by the court that it is his right to have counsel before proceeding"; in (2) deleted former first sentence that read: "The defendant, if charged with a felony, must be advised that counsel will be furnished at state expense if he is unable to employ counsel as determined under the provisions of 46-8-111", deleted "If the offense charged is a felony", after "employ counsel" inserted "and is entitled to have counsel assigned", and at end substituted "the defendant without unnecessary delay" for "defend him"; substituted (3) concerning criteria considered in determining if assigned counsel is required for former (3) that read: "(3) If the offense charged is a misdemeanor and if the defendant desires counsel and is unable to employ counsel, a court in the interest of justice may assign counsel to defend him"; and made minor changes in style.

Cross-References

Rights of the accused, Art. II, sec. 24, Mont. Const.

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel — sentencing hearing, 46-18-223.

Right to counsel — parole hearing, 46-23-204.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-8-102. Waiver of counsel. A defendant may waive the right to counsel when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently.

History: En. 95-1002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1002; amd. Sec. 2, Ch. 386, L. 1979; amd. Sec. 64, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: After "counsel" substituted "when the court ascertains that the waiver is made knowingly, voluntarily, and intelligently" for "except that in all felony cases where the defendant is under 18 years of age, the defendant shall be represented by counsel at every stage of the proceedings following the filing of a petition under 41-5-501".

46-8-103. Duration of appointment. (1) When counsel has been assigned, the assignment is effective until final judgment, including any proceeding upon direct appeal to the Montana supreme court, unless relieved by order of the court that assigned counsel or that has jurisdiction over the case.

(2) If counsel finds the defendant's case on appeal to be wholly frivolous, counsel shall advise the court of that fact and request permission to withdraw. The request to withdraw must be accompanied by a memorandum referring to anything in the record that might arguably support the appeal. The defendant is entitled to receive a copy of counsel's memorandum and to file a reply with the court.

History: En. 95-1003 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1003; amd. Sec. 65, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "appeal", inserted "to the Montana supreme court" and after "the court" inserted "that assigned counsel or that has jurisdiction over the case"; inserted (2) concerning withdrawal of counsel; and made minor changes in style.

46-8-104. Appointment after trial. Any court of record may assign counsel to defend any defendant, petitioner, or appellant in any postconviction criminal action or proceeding if he desires counsel and is unable to employ counsel.

History: En. 95-1004 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1004.

46-8-105 through 46-8-110 reserved.

46-8-111. Eligibility for court-appointed counsel — determination of indigence. (1) The court shall make a determination of indigence.

(2) In applying for court-appointed counsel, a defendant shall submit a sworn financial statement demonstrating financial inability to obtain legal representation without substantial hardship in providing for personal or family necessities. The statement is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the declarant for perjury or false swearing.

History: En. Sec. 2, Ch. 415, L. 1981; amd. Sec. 1, Ch. 479, L. 1987; amd. Sec. 66, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Substituted present language concerning determination of indigence based on a sworn financial statement not admissible in other proceedings except for impeachment or a perjury prosecution for former text that read: "(1) Any defendant who desires counsel and is unable to employ counsel shall submit under oath to the court at the time of his initial appearance a verified financial statement showing his financial inability to obtain counsel.

(2) Except as provided in subsection (3), appointed counsel may not be denied to any person merely because his friends or relatives have the resources to retain counsel or because he has deposited or is capable of depositing security for his release. Counsel shall be provided to any person who is financially unable to obtain representation without substantial hardship in providing necessities to himself or his family.

(3) In determining whether a minor charged with an offense which, if committed by an adult, would be a felony is eligible for court-appointed counsel, the court shall consider the resources of the minor and his parents and may deny or appoint counsel accordingly. The minor and his parents shall submit under oath the verified financial statement required by subsection (1)".

46-8-112. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. Sec. 3, Ch. 415, L. 1981.

46-8-113. Payment for court-appointed counsel by defendant. (1) The court may require a convicted defendant to pay the costs of court-appointed counsel as a part of or a condition under the sentence imposed as provided in Title 46.

(2) Costs must be limited to reasonable compensation and costs incurred by the court-appointed counsel in the criminal proceeding.

(3) The court may not sentence a defendant to pay the costs of court-appointed counsel unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(4) A defendant who has been sentenced to pay costs and who is able to but refuses or fails to pay those costs may at any time petition the court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the

defendant's immediate family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 4, Ch. 415, L. 1981; amd. Sec. 67, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, deleted "Under the provisions of 46-18-201" and at end inserted "imposed as provided in Title 46"; in (2) deleted second sentence that read: "Costs may not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law"; in (4), after "who is", substituted "able to but refuses or fails to pay those costs" for "not in contumacious default in the payment thereof"; and made minor changes in style.

46-8-114. Time and method of payment. When a defendant is sentenced to pay the costs of court-appointed counsel, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the clerk of the district court. The clerk of the district court shall distribute the payments to the government agency responsible for the expense of court-appointed counsel as provided for in 46-8-201.

History: En. Sec. 5, Ch. 415, L. 1981; amd. Sec. 1, Ch. 295, L. 1985; amd. Sec. 9, Ch. 680, L. 1985; amd. Sec. 68, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Near end substituted "distribute the payments to the government agency" for "disburse the payments to the county, agency, state agency, or local government unit"; and made minor changes in style.

46-8-115. Effect of nonpayment. (1) When a defendant who is sentenced to pay the costs of court-appointed counsel defaults in payment of the costs or of any installment, the court on motion of the county attorney or on its own motion may require him to show cause why the default should not be treated as contempt of court and may issue a show cause citation or an arrest warrant requiring the defendant's appearance.

(2) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(3) The term of imprisonment for contempt for nonpayment of the costs of court-appointed counsel must be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

(4) If it appears to the satisfaction of the court that the default in the payment of costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment of the unpaid portion of the costs in whole or in part.

(5) A default in the payment of costs or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant com-

mitted to imprisonment for contempt until the amount of the payment for costs has actually been collected.

History: En. Sec. 6, Ch. 415, L. 1981; amd. Sec. 69, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Part 2

Compensation of Assigned Counsel

46-8-201. Remuneration of appointed counsel. (1) Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, the attorney must be paid for the services a sum as a district court judge or justice of the state supreme court certifies to be a reasonable compensation and be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable as provided in 3-5-901 to the county in which the proceeding arose, the state, or both, except that:

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal or city court, the expense is chargeable to the city or town in which the proceeding arose; or

(b) when there has been an arrest by agents of the department of fish, wildlife, and parks or agents of the department of justice and the charge is prosecuted by personnel of the state agency that made the charge, the expense must be borne by the prosecuting state agency.

History: En. 95-1005 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 186, L. 1973; amd. Sec. 1, Ch. 15, L. 1974; amd. Sec. 9, Ch. 184, L. 1977; R.C.M. 1947, 95-1005; amd. Sec. 2, Ch. 218, L. 1979; amd. Sec. 2, Ch. 295, L. 1985; amd. Sec. 10, Ch. 680, L. 1985; amd. Sec. 8, Ch. 1, Sp. L. 1985; amd. Sec. 7, Ch. 704, L. 1991; amd. Sec. 70, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 704 in (2), near end of introductory clause, substituted "state" for "department of commerce". Amendment effective July 1, 1991.

Chapter 800 in (1), after "district court", inserted "judge"; and made minor changes in style.

46-8-202. Public defender's office. Any county through its board of county commissioners may provide for the creation of a public defender's office and the appointment of a salaried public defender and such assistant public defenders as may be necessary to satisfy the legal requirements in providing counsel for defendants unable to employ counsel. The costs of such office shall be at state expense payable according to procedures established under 3-5-902(1) and, to the extent those costs are not paid by the state, at county expense in accordance with 3-5-901(3) and 3-5-902(1).

History: En. 95-1006 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1006; amd. Sec. 11, Ch. 680, L. 1985.

46-8-203 through 46-8-209 reserved.

46-8-210. *(Temporary)* **Short title.** Sections 46-8-210 through 46-8-213 may be cited as the "Appellate Defender Act". *(Terminates July 1, 1993—sec. 13, Ch. 781, L. 1991.)*

History: En. Sec. 1, Ch. 781, L. 1991.

Compiler's Comments

Retroactive Applicability: Section 11, Ch. 781, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1991."

Effective Date: Section 12, Ch. 781, L. 1991, provided: "[This act] is effective on passage and approval." Approved May 17, 1991.

Termination: Section 13, Ch. 781, L. 1991, provided: "[This act] terminates July 1, 1993."

46-8-211. *(Temporary)* **Office of appellate defender — appellate defender — hiring — dismissal — staff.** (1) There is an office of appellate defender.

(2) The appellate defender must be hired by and shall serve at the pleasure of the appellate defender commission.

(3) The appellate defender shall hire and supervise the work of supporting personnel authorized by the commission. *(Terminates July 1, 1993—sec. 13, Ch. 781, L. 1991.)*

History: En. Sec. 3, Ch. 781, L. 1991.

Compiler's Comments

Retroactive Applicability: Section 11, Ch. 781, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1991."

Effective Date: Section 12, Ch. 781, L. 1991, provided: "[This act] is effective on passage and approval." Approved May 17, 1991.

Termination: Section 13, Ch. 781, L. 1991, provided: "[This act] terminates July 1, 1993."

46-8-212. *(Temporary)* **Appellate defender — qualifications — duties.** (1) The appellate defender and any deputy or assistant appellate defender:

(a) must be an attorney licensed to practice law in this state;

(b) shall perform duties as may be provided by law or established by the appellate defender commission; and

(c) must have those qualifications otherwise required by the commission.

(2) The duties of the appellate defender are to:

(a) assume responsibility for appeals from district court and petitions for postconviction relief from proceedings in district court on behalf of indigent defendants only after conviction, as defined by 46-1-202, when:

(i) the defendant alleges that ineffective assistance of counsel resulted in conviction;

(ii) a district judge or the chief justice or an associate justice of the supreme court finds further representation by previously appointed counsel would not serve the interests of justice; or

(iii) the appellate defender agrees to assist in or assume responsibility for appeal;

(b) aid the commission in compiling and keeping current a statewide roster of attorneys eligible for appointment by an appropriate court as trial and appellate defense counsel for the indigent;

(c) keep a record of those services and expenses for the commission; and

(d) perform the duties otherwise established by the commission. *(Terminates July 1, 1993—sec. 13, Ch. 781, L. 1991.)*

History: En. Sec. 4, Ch. 781, L. 1991.

Compiler's Comments

Retroactive Applicability: Section 11, Ch. 781, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1991."

Effective Date: Section 12, Ch. 781, L. 1991, provided: "[This act] is effective on passage and approval." Approved May 17, 1991.

Termination: Section 13, Ch. 781, L. 1991, provided: "[This act] terminates July 1, 1993."

46-8-213. *(Temporary)* **Appellate defender — classification — salary — expenses.** The appellate defender and staff must be classified according to the state classification pay plan and are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18. *(Terminates July 1, 1993—sec. 13, Ch. 781, L. 1991.)*

History: En. Sec. 5, Ch. 781, L. 1991.

Compiler's Comments

Retroactive Applicability: Section 11, Ch. 781, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to January 1, 1991."

Effective Date: Section 12, Ch. 781, L. 1991, provided: "[This act] is effective on passage and approval." Approved May 17, 1991.

Termination: Section 13, Ch. 781, L. 1991, provided: "[This act] terminates July 1, 1993."

CHAPTER 9

BAIL

Part 1 — Definition and Availability of Bail

46-9-101. Repealed.
46-9-102. Bailable offenses.
46-9-103. Renumbered 46-9-107 by Code Commissioner, 1991.
46-9-104. Bail on a new trial.
46-9-105. General authority for release and detention.
46-9-106. Release or detention of defendant pending trial.
46-9-107. Release or detention pending appeal — revocation — sentencing hearing.
46-9-108. Conditions upon defendant's release.
46-9-109. Release or detention hearing.
46-9-110. Release order.
46-9-111. Release on own recognizance.
46-9-112 through 46-9-114 reserved.
46-9-115. Release ordered by court where charge not pending.

Part 2 — Bail—General Procedural Provisions

46-9-201. Who may admit to bail.
46-9-202. Renumbered 46-9-115 by Code Commissioner, 1991.
46-9-203. Report to county attorney concerning drug users.
46-9-204. Repealed.
46-9-205. Renumbered 46-9-510 by Code Commissioner, 1991.

46-9-206. Setting bail — appearance or use of two-way electronic audio-video communication.

Part 3 — The Amount of Bail

46-9-301. Determining the amount of bail.
46-9-302. Bail schedule — acceptance by peace officer.
46-9-303. Repealed.
46-9-304 through 46-9-310 reserved.
46-9-311. Reduction, increase, revocation, or substitution of bail.

Part 4 — Furnishing Bail

46-9-401. Forms of bail.
46-9-402. Persons prohibited from furnishing bail security.
46-9-403. Qualifying property as bail.
46-9-404. Repealed.
46-9-405 through 46-9-410 reserved.
46-9-411. Repealed.
46-9-412. Guaranteed arrest bond certificates.
46-9-413. Repealed.
46-9-414. Certificates accepted in lieu of cash.

Part 5 — Conditions of Bail—Violation Thereof

46-9-501. Renumbered 46-9-108 by Code Commissioner, 1991.
46-9-502. Conditions performed — bail discharged.
46-9-503. Violation of release condition — forfeiture.
46-9-504. Renumbered 46-9-512 by Code Commissioner, 1991.
46-9-505. Issuance of arrest warrant — redetermining bail.
46-9-506 through 46-9-509 reserved.
46-9-510. Surrender of defendant.
46-9-511. Forfeiture procedure.
46-9-512. Use of forfeited bail as restitution.

Chapter Cross-References
Bail, Art. II, sec. 21, Mont. Const.

Part 1

Definition and Availability of Bail

46-9-101. Repealed. Sec. 263, Ch. 800, L. 1991.
History: En. 95-1101 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1101; amd. Sec. 1, Ch. 692, L. 1985.

46-9-102. Bailable offenses. (1) All persons shall be bailable before conviction, except when death is a possible punishment for the offense charged and the proof is evident or the presumption great that the person is guilty of the offense charged.

(2) On the hearing of an application for admission to bail made before or after indictment or information for a capital offense, the burden of showing that the proof is evident or the presumption great that the defendant is guilty of the offense is on the state.

History: En. 95-1108 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1108.

Cross-References

Bailable offenses, Art. II, sec. 21, Mont. Const.

Duty of judge to admit defendant to bail in accordance with law, 46-7-102.

46-9-103. Renumbered 46-9-107 by Code Commissioner, 1991.

46-9-104. Bail on a new trial. If the judgment of conviction is reversed and the cause remanded for a new trial, the trial court may order that the bail stand pending such trial or substitute, reduce, or increase bail.

History: En. 95-1119 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 12, Ch. 184, L. 1977; R.C.M. 1947, 95-1119.

46-9-105. General authority for release and detention. (1) An arrested person must be released or detained pending judicial proceedings pursuant to Title 46, chapter 9.

(2) If a person is released, that person shall appear to answer the charge for the alleged commission of the offense, as ordered, in the court having jurisdiction.

History: En. Sec. 71, Ch. 800, L. 1991.

46-9-106. Release or detention of defendant pending trial. Before a verdict has been rendered, the court shall:

(1) authorize the release of the defendant upon reasonable conditions that ensure the appearance of the defendant and protect the safety of the community or of any person; or

(2) detain the defendant when there is probable cause to believe that the defendant committed an offense for which death is a possible punishment and adequate safeguards are not available to ensure the defendant's appearance and the safety of the community.

History: En. Sec. 72, Ch. 800, L. 1991.

46-9-107. Release or detention pending appeal — revocation — sentencing hearing. A person intending to appeal from a judgment imposing a fine only or from any judgment rendered by a justice's court or city court must be admitted to bail. The court shall order the detention of a defendant found guilty of an offense who is awaiting imposition or execution of sentence or a revocation hearing or who has filed an appeal unless the court finds that, if released, the defendant is not likely to flee or pose a danger to the safety of any person or the community.

History: En. 95-1109 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1109; amd. Sec. 1, Ch. 207, L. 1979; amd. Sec. 2, Ch. 692, L. 1985; amd. Sec. 73, Ch. 800, L. 1991; Sec. 46-9-103, MCA 1989; redes. 46-9-107 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: At beginning of second sentence substituted "The court shall order the detention of a defendant" for "A person", after "sentence" substituted "or a revocation hearing or" for "or a person found guilty of an offense and sentenced to a term of imprisonment", and after "appeal" substituted "unless the court" for "may be admitted to bail only if the judge"; deleted (2) that read: "(2) A person found guilty of the offense of deliberate homicide is presumed to pose a danger to the safety of the community, which presumption is rebuttable"; and made minor changes in style.

46-9-108. Conditions upon defendant's release. (1) The court may impose any condition that will reasonably ensure the appearance of the defendant as required or that will ensure the safety of any person or the community, including but not limited to the following conditions:

(a) the defendant may not commit an offense during the period of release;

(b) the defendant shall remain in the custody of a designated person who agrees to supervise the defendant and report any violation of a release condition to the court, if the designated person is reasonably able to assure the court that the defendant will appear as required and will not pose a danger to the safety of any person or the community;

(c) the defendant shall maintain employment or, if unemployed, actively seek employment;

(d) the defendant shall abide by specified restrictions on the defendant's personal associations, place of abode, and travel;

(e) the defendant shall avoid all contact with an alleged victim of the crime and any potential witness who may testify concerning the offense;

(f) the defendant shall report on a regular basis to a designated agency or individual, pretrial services agency, or other appropriate individual;

(g) the defendant shall comply with a specified curfew;

(h) the defendant may not possess a firearm, destructive device, or other dangerous weapon;

(i) the defendant may not use or possess alcohol, or any dangerous drug or other controlled substance without a legal prescription;

(j) the defendant shall furnish bail in accordance with 46-9-401; or

(k) the defendant shall return to custody for specified hours following release from employment, schooling, or other approved purposes.

(2) The court may not impose an unreasonable condition that results in pretrial detention of the defendant and shall subject the defendant to the least restrictive condition or combination of conditions that will ensure the defendant's appearance and provide for protection of any person or the community. At any time, the court may, upon a reasonable basis, amend the order to impose additional or different conditions of release upon its own motion or upon the motion of either party.

History: En. 95-1118 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 11, Ch. 184, L. 1977; R.C.M. 1947, 95-1118; amd. Sec. 4, Ch. 692, L. 1985; amd. Sec. 74, Ch. 800, L. 1991; Sec. 46-9-501, MCA 1989; redes. 46-9-108 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Deleted former (1) and (1)(a) that read: "(1) If a person is admitted to bail, the conditions of bail shall be:

(a) that he will appear to answer in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged on final order of the court and will not depart from this state without leave"; in (1), near beginning after "required", substituted "or that will ensure the safety of any person or the community" for "and to protect any person from bodily injury"; inserted (1)(a) concerning not committing an offense; at end of (1)(b) inserted "and will not pose a danger to the safety of any person or the community"; deleted (1)(b)(iii) that read: "(iii) maintain or commence an educational program"; near end of (1)(d) inserted "the defendant's personal associations, place of abode, and"; at end of (1)(e) deleted "except that contact which is necessary to the preparation of the defense"; in (1)(f), before "agency", deleted "law enforcement", after "or" inserted "individual", and at end inserted "or other appropriate individual"; in (1)(i), at end after "drug", substituted "or other controlled substance without a legal prescription" for "without a prescription from a licensed medical practitioner"; deleted (1)(b)(x) that read: "(x) undergo available medical or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose"; inserted (1)(j) concerning bail; inserted (1)(k) concerning return to custody for specified hours; inserted (2) prohibiting unreasonable conditions; deleted (3) that read: "(3) If the defendant is admitted to bail after conviction, the conditions of bail, in addition to those set forth in subsection (1), shall be that:

(a) he will duly prosecute his appeal; and

(b) if the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith surrender to the officer from whose custody he was bailed"; and made minor changes in style.

46-9-109. Release or detention hearing. (1) The release or detention of the defendant must be determined immediately upon the defendant's initial appearance.

(2) In determining whether the defendant should be released or detained, the court shall take into account the available information concerning:

(a) the nature and circumstances of the offense charged, including whether the offense involved the use of force or violence;

(b) the weight of the evidence against the defendant;

(c) the history and characteristics of the defendant, including:

(i) the defendant's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to alcohol or drug abuse, criminal history, and record concerning the appearance at court proceedings; and

(ii) whether at the time of the current arrest or offense, the defendant was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentencing for an offense;

(d) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release; and

(e) the property available as collateral for the defendant's release to determine if it will reasonably ensure the appearance of the defendant as required.

(3) Upon the motion of any party or the court, a hearing may be held to determine whether bail is established in the appropriate amount or whether any other condition or restriction upon the defendant's release will reasonably ensure the appearance of the defendant and the safety of any person or the community.

History: En. Sec. 75, Ch. 800, L. 1991.

46-9-110. Release order. A release order issued by the court must include a written statement setting forth any restrictions or conditions upon the defendant's release.

History: En. Sec. 76, Ch. 800, L. 1991.

46-9-111. Release on own recognizance. Any person in custody, if otherwise eligible for bail, may be released on his personal recognizance subject to such conditions as the court may reasonably prescribe to assure his appearance when required. Any person released as herein provided shall be fully apprised by the court of the penalty provided for failure to comply with the terms of his recognizance.

History: En. 95-1106 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1106.

46-9-112 through 46-9-114 reserved.

46-9-115. Release ordered by court where charge not pending. If release is ordered or bail is accepted by a court other than the court in which the charge is pending, any bonds, instrument of ownership, or money posted and a written statement of other conditions of release must be delivered without delay to the court in which the charge is pending.

History: En. 95-1105 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1105; amd. Sec. 3, Ch. 710, L. 1991; amd. Sec. 77, Ch. 800, L. 1991; Sec. 46-9-202, MCA 1989; redes. 46-9-115 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendments: Chapter 710 amendments rendered void by Ch. 800.

Chapter 800 substituted present language concerning delivery of posted financial items and conditions of release for former text that read: "The defendant, when arrested for a bailable offense, must be taken without unnecessary delay before the nearest or most accessible judge in order that bail may be fixed. If the defendant is brought before a judge other than the court in which the charge is pending, the judge must establish and accept bail and set the time for the appearance of the defendant in the court in which the charge is pending. Upon acceptance of bail, the judge must deliver the bail without delay to the court in which the charge is pending".

Part 2

Bail — General Procedural Provisions

46-9-201. Who may admit to bail. A judge may admit to bail any defendant properly appearing before him in a bail proceeding. When bound over to any court or judge having jurisdiction of the offense charged, bail must be continued provided that the court or judge having jurisdiction may increase, reduce, or substitute bail. On appeal, a judge before whom the trial was had or a judge having the power to issue a writ of habeas corpus may admit the defendant to bail. For purposes of this section, a defendant's appearance before a judge may be either by physical appearance before the court or by two-way electronic audio-video communication as provided in 46-9-115.

History: En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(a); amd. Sec. 2, Ch. 710, L. 1991.

Compiler's Comments

1991 Amendment: Inserted fourth sentence allowing satisfaction of requirement of initial appearance of defendant by two-way electronic audio-video communication; and made minor changes in style.

46-9-202. Renumbered 46-9-115 by Code Commissioner, 1991.

46-9-203. Report to county attorney concerning drug users. A city judge, judge of a municipal court, or justice of the peace shall report immediately to the county attorney of the county wherein his court is located any knowledge or information acquired by him in a trial of a cause or hearing before him, which knowledge or information shows or tends to show that any person is a drug user or drug addict. If such person is under arrest or liberated on bail at the time the knowledge or information is acquired, such person may not be liberated, if under arrest, or the bail discharged by the judge or justice of the peace until the report is made to the county attorney.

History: En. Sec. 10, Ch. 202, L. 1921; re-en. Sec. 3198, R.C.M. 1921; re-en. Sec. 3198, R.C.M. 1935; R.C.M. 1947, 66-1520; amd. Sec. 6, Ch. 116, L. 1979.

46-9-204. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1102 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1102(b).

46-9-205. Renumbered 46-9-510 by Code Commissioner, 1991.

46-9-206. Setting bail — appearance or use of two-way electronic audio-video communication. The requirement that a defendant be taken before a judge for setting of bail may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for the hearing of an application for admission to bail.

History: En. Sec. 3, Ch. 710, L. 1991.

Compiler's Comments

1991 Codification: This section was enacted by Ch. 710 as subsection (2) of 46-9-202 (now 46-9-115). The Code Commissioner codified the subsection as a new section because of the numerous amendments to 46-9-202 (now 46-9-115) made by Ch. 800, L. 1991.

Part 3

The Amount of Bail

46-9-301. Determining the amount of bail. In all cases that bail is determined to be necessary, bail must be reasonable in amount and the amount shall be:

(1) sufficient to ensure the presence of the defendant in a pending criminal proceeding;

(2) sufficient to assure compliance with the conditions set forth in the bail;

(3) sufficient to protect any person from bodily injury;

(4) not oppressive;

(5) commensurate with the nature of the offense charged;

(6) considerate of the financial ability of the accused;

(7) considerate of the defendant's prior record;

(8) considerate of the length of time the defendant has resided in the community and of his ties to the community;

(9) considerate of the defendant's family relationships and ties;

(10) considerate of the defendant's employment status; and

(11) sufficient to include the charge imposed in 46-18-236.

History: En. 95-1110 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1110; amd. Sec. 3, Ch. 692, L. 1985; amd. Sec. 2, Ch. 17, Sp. L. June 1986.

Cross-References

Excessive bail prohibited, Art. II, sec. 22, Mont. Const.

46-9-302. Bail schedule — acceptance by peace officer. (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse or any assault against a family member or a household member.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered.

History: En. 95-1103 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1103; amd. Sec. 6, Ch. 700, L. 1985; amd. Sec. 78, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section substituted "judge" for "justice of the peace or city judge"; in (1), in first sentence before "bail", deleted "cash" and at end substituted "over which the judge has original jurisdiction" for "except for offenses amounting to felonies and the offense of domestic abuse" and inserted second sentence requiring appearance for domestic offenses; at end of (2)(a) inserted "established under subsection (1)"; inserted (2)(b) concerning bail specified in arrest warrant; and made minor changes in style.

Cross-References

Duty of patrol officer to accept bail, 44-1-1101.

Procedure for acceptance of bail by patrol officer, 44-1-1102.

Criminal offense of domestic abuse, 45-5-206.

46-9-303. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1104 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 10, Ch. 184, L. 1977; R.C.M. 1947, 95-1104.

46-9-304 through 46-9-310 reserved.

46-9-311. Reduction, increase, revocation, or substitution of bail. (1) Upon application by the state or the defendant, the court before which the proceeding is pending may increase or reduce the amount of bail, substitute one bail for another, alter the conditions of the bail, or revoke bail.

(2) Reasonable notice of such application must be given to the opposing parties or their attorneys by the applicant.

History: En. 95-1111 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1111; amd. Sec. 7, Ch. 116, L. 1979.

Part 4

Furnishing Bail

46-9-401. Forms of bail. (1) Bail may be furnished in the following ways:

(a) by a deposit with the court of an amount equal to the required bail of cash, stocks, bonds, certificates of deposit, or other personal property approved by the court;

(b) by pledging real estate situated within the state with an unencumbered equity, not exempt, owned by the defendant or sureties at a value double the amount of the required bail;

(c) by posting a written undertaking executed by the defendant and by two sufficient sureties; or

(d) by posting a commercial surety bond executed by the defendant and by a qualified agent for and on behalf of the surety company.

(2) The amount of the bond must ensure the appearance of the defendant at all times required through all stages of the proceeding including trial de novo, if any, and unless the bond is denied by the court pursuant to 46-9-107, must remain in effect until final sentence is pronounced in open court.

(3) Nothing in this chapter prohibits a surety from surrendering the defendant pursuant to 46-9-510 in a case in which the surety feels insecure in accepting liability for the defendant.

History: En. 95-1112 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1112; amd. Sec. 79, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a), before "court", deleted "clerk of the", after "bonds" inserted "certificates of deposit", and at end substituted "other personal property approved by the court" for "any combination thereof approved by the judge"; in (1)(b), at beginning, inserted "pledging" and substituted "defendant" for "accused"; at beginning of (1)(c) and (1)(d) inserted "posting"; inserted (2) concerning bond ensuring appearance; inserted (3) authorizing surety to surrender defendant; and made minor changes in style.

46-9-402. Persons prohibited from furnishing bail security. No attorney-at-law and no official authorized to admit another to bail shall act as surety or furnish bail.

History: En. 95-1120 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1120.

Cross-References

Attorney not to become surety on bond, 37-61-419.

46-9-403. Qualifying property as bail. (1) If property posted as a condition of release is personal property, the defendant or sureties shall file a sworn schedule that must contain a list of the personal property, including a description of each item, its location and market value, and the total market value of all items listed.

(2) If the property is real estate:

(a) the defendant or sureties shall file a sworn schedule that must contain a legal description of the property, a description of any and all encumbrances on the property, including the amount of each and the holder of the encumbrance, and the market value of the unencumbered equity owned by the defendant or sureties; and

(b) a certified copy of the schedule of the property must be filed immediately by the court in the office of the clerk and recorder of the county in which the property is situated. The state has a lien on the property from the time the copy is filed. The clerk and recorder shall enter, index, and record the schedule without requiring any fee.

(3) If the property posted as a condition of release is a written undertaking with sureties, each surety must be a resident or freeholder within the state. Each surety must be worth the amount specified in the undertaking, exclusive of property exempt from execution, but the court or judge on taking the property may allow more than two sureties to justify severally and in amounts less than that expressed in the undertaking if the whole justification is equivalent to the amount required.

(4) If the property posted as a condition of release is a commercial bond, it may be executed by any domestic or foreign surety company that is qualified to transact surety business in this state. The undertaking must be in the form prescribed by the commissioner of insurance and must state the following:

(a) the name and address of the commercial surety company that issued the bond;

(b) the amount of the bond and the unqualified obligation of the surety company to pay the court should the defendant fail to appear as guaranteed; and

(c) a provision that the surety company may not revoke the undertaking without good cause.

(5) The court may examine the sufficiency of an undertaking and take any action it considers proper to ensure that a sufficient undertaking is posted.

History: En. 95-1113 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1113; amd. Sec. 8, Ch. 116, L. 1979; amd. Sec. 80, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) and (2) substituted "defendant" for "accused"; in (1), at beginning, substituted "property posted as a condition of release is personal property" for "the bail is stock or bonds or both" and after "list of the" substituted "personal property, including a description of each item, its location and market value, and the total market value of all items listed" for "stocks and bonds deposited describing each in sufficient detail that it may be identified, the market value of each stock or bond, and the total market value of the stocks and bonds listed"; in (2) and (3) substituted "property" for "bail"; in two places in (2)(a) and two places in (2)(b) substituted "property" for "real estate"; in (2)(a), at end, substituted "defendant or sureties" for "affiant"; in (3) and (4) substituted "property posted as a condition of release" for "bail"; in (3), near middle of second sentence, substituted "judge" for "magistrate"; in (4) before "bond" deleted "surety" and inserted last clause and (4)(a) through (4)(c) concerning form prescribed by Commissioner of Insurance and requirements of undertaking; inserted (5) authorizing court examination of undertaking; and made minor changes in style.

Cross-References

Suretyship, Title 28, ch. 11, part 4.

46-9-404. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1114 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1114.

46-9-405 through 46-9-410 reserved.

46-9-411. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(3); amd. Sec. 1, Ch. 415, L. 1989.

46-9-412. Guaranteed arrest bond certificates. (1) A domestic or foreign surety company that has qualified to transact surety business in this state may, in any year, become surety in an amount not exceeding $500 with respect to any guaranteed arrest bond certificates issued in the year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state by filing with the commissioner of insurance an undertaking to become surety.

(2) The form of the undertaking must be prescribed by the commissioner of insurance and must include those matters required by 46-9-401.

History: En. 95-1121 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 13, Ch. 184, L. 1977; R.C.M. 1947, 95-1121(1), (2); amd. Sec. 2, Ch. 415, L. 1989; amd. Sec. 81, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) decreased amount from $5,000 to $500; in (2) substituted "must include those matters required by 46-9-401" for "and shall state the following:

(a) the name and address of the automobile clubs, automobile associations, or insurance companies which issued the guaranteed arrest bond certificates with respect to which the surety company undertakes to be surety; and

(b) the unqualified obligation of the surety company to pay the fine or forfeiture in an amount not exceeding $5,000 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted"; and made minor changes in style.

Cross-References

Surety insurance, 33-1-211.
Suretyship, Title 33, ch. 26.

46-9-413. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1123 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1123.

46-9-414. Certificates accepted in lieu of cash. (1) A guaranteed arrest bond certificate must, when posted by the person whose signature appears on the certificate, be accepted in lieu of cash bail in an amount not exceeding $1,000 as a bail bond to guarantee the appearance of the person in any court, including a municipal court, in this state at the time required by the court when the person was arrested for violation of a motor vehicle law of this state or an ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate.

(2) A guaranteed arrest bond certificate is subject to the same forfeiture and enforcement provisions established by this chapter unless otherwise provided by law.

History: En. 95-1122 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 14, Ch. 184, L. 1977; R.C.M. 1947, 95-1122; amd. Sec. 3, Ch. 415, L. 1989; amd. Sec. 82, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning after "certificate", deleted "with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state as provided in 46-9-411 and 46-9-412" and decreased amount from $5,000 to $1,000; in (2), after "certificate", deleted "posted as a bail bond in a court in this state" and at end, after "provisions", substituted "established by this chapter unless otherwise provided by law" for "as bail bonds posted in criminal cases, and a guaranteed arrest bond certificate posted as a bail bond in a municipal court in this state is subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular

municipality pertaining to bail bonds posted"; and made minor changes in style.

Part 5

Conditions of Bail — Violation Thereof

Part Cross-References
Bail-jumping, 45-7-308.

46-9-501. Renumbered 46-9-108 by Code Commissioner, 1991.

46-9-502. Conditions performed — bail discharged. When the conditions of bail have been performed and the accused has been discharged from his obligations in the cause, the court shall return to him or his sureties the deposit of any cash, stocks, or bonds. If the bail is real estate, the court shall notify in writing the county clerk and recorder and the lien of the bail bond on the real estate shall be discharged. If the bail is a written undertaking or a commercial surety bond, it shall be discharged and the sureties exonerated.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(a).

46-9-503. Violation of release condition — forfeiture. (1) If a defendant violates a condition of release, including failure to appear, the prosecutor may make a written motion to the court for revocation of the order of release. A judge may issue a warrant for the arrest of a defendant charged with violating a condition of release. Upon arrest, the defendant must be brought before a judge in accordance with 46-7-101.

(2) If a defendant fails to appear before a court as required and bail has been posted, the judge may declare the bail forfeited. Notice of the order of forfeiture must be mailed to the defendant and the defendant's sureties at their last-known address.

(3) If at any time within 30 days after the forfeiture the defendant or the defendant's sureties appear and satisfactorily excuse the defendant's failure to appear, the judge may direct the forfeiture to be discharged upon terms as may be just.

History: En. 95-1116 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; R.C.M. 1947, 95-1116(b), (c); amd. Sec. 83, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted present language concerning violation of condition of release and arrest for former text that read: "If the accused does not comply with the conditions of the bail bond, the court having jurisdiction shall enter an order declaring the bail to be forfeited"; in (2) substituted first sentence concerning forfeiture of bail for failure to appear for former text that read: "If such forfeiture is declared by a district court" and in second sentence substituted "defendant" for "accused"; in (3), after "defendant or", substituted "the defendant's sureties appear and satisfactorily excuse the defendant's failure to appear, the judge" for "his bail appear and satisfactorily excuse his negligence or failure to comply with the conditions of the bail, the court, in its discretion"; deleted (4) that read: "(4) If such forfeiture is declared by a district court and if the forfeiture is not discharged as provided in this section, the court shall enter judgment for the state against the accused and his sureties for the amount of the bail and costs of the proceedings"; and made minor changes in style.

Cross-References

Disposition of bail forfeited for traffic offenses, 20-7-505.

Forfeiture of bail, 46-30-305.

46-9-504. Renumbered 46-9-512 by Code Commissioner, 1991.

46-9-505. Issuance of arrest warrant — redetermining bail. (1) Upon failure to comply with any condition of a bail or recognizance, the court having jurisdiction at the time of such failure may, in addition to any other action provided by law, issue a warrant for the arrest of the person at liberty on bail or on his own recognizance.

(2) On verified application by the state setting forth facts or circumstances constituting a breach or threatened breach of any of the conditions of the bail or a threat or an attempt to influence the pending proceeding, the court may issue a warrant for the arrest of the defendant.

(3) Upon the arrest, the defendant shall be brought before the court without unnecessary delay and the court shall conduct a hearing and determine bail in accordance with 46-9-311.

History: En. 95-1107 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1107.

46-9-506 through 46-9-509 reserved.

46-9-510. Surrender of defendant. (1) At any time before the forfeiture of bail:

(a) the defendant may surrender to the court or any peace officer of this state; or

(b) the surety company may arrest the defendant and surrender the defendant to the court or any peace officer of this state.

(2) The peace officer shall detain the defendant in the officer's custody as upon commitment and shall file a certificate, acknowledging the surrender, in the court having jurisdiction of the defendant. The court may then order the bail exonerated.

History: En. 95-1115 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1115; amd. Sec. 84, Ch. 800, L. 1991; Sec. 46-9-205, MCA 1989; redes. 46-9-510 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1)(a), after "to the", substituted "court or any peace officer of this state" for "officer to whose custody he was committed at the time of giving bail"; in (1)(b), at beginning, deleted "At any time before the forfeiture of bail", and after "may" inserted "arrest the defendant and", and after "to the" substituted "court or any peace officer of this state" for "officer to whose custody he was committed and for this purpose may themselves arrest the defendant or by written authority endorsed on a certified copy of the undertaking may empower any person of suitable age and discretion to do so"; and made minor changes in style.

46-9-511. Forfeiture procedure. When an order of forfeiture is not discharged, the court having jurisdiction shall proceed with the forfeiture of bail as follows:

(1) if money has been posted as bail, the court shall pay the money to the treasury of the city or county where the money was posted; or

(2) if other property is posted as a condition of release, the property must be sold in the same manner as property sold in civil actions. The proceeds of

the sale must be used to satisfy all court costs and prior encumbrances, if any, and from the balance, a sufficient sum to satisfy the judgment or forfeiture must be paid into the treasury of the city or county where the case is pending.

(3) If a surety bond has been posted as bail, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions.

History: En. Sec. 85, Ch. 800, L. 1991.

46-9-512. Use of forfeited bail as restitution. (1) If the court enters a judgment declaring bail to be forfeited or if the order of forfeiture is not discharged, the court having jurisdiction may order the bail forfeited to be paid as restitution to any victim of the offense for which the court has received bail. Whenever the court believes that restitution may be proper, the court shall order a hearing for the purpose of considering the nature and extent of the victim's pecuniary loss as defined by law.

(2) If the court finds that restitution is appropriate, the court shall order restitution in an amount not exceeding the amount of the victim's complaint or the amount of the victim's pecuniary loss.

(3) An order to require restitution is a judgment against the defendant and the defendant's sureties, and the court may order the restitution to be made by payment of money deposited as bail. Any balance of the bail money must be disposed of in the same manner as provided in 46-9-511.

(4) A determination or decision under this section is not admissible as evidence in any other civil action and is not res judicata in any civil action.

History: En. 95-1117 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1117; amd. Sec. 1, Ch. 132, L. 1985; amd. Sec. 1, Ch. 142, L. 1989; amd. Sec. 86, Ch. 800, L. 1991; Sec. 46-9-504, MCA 1989; redes. 46-9-512 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Deleted former (1) that read: "(1) Unless restitution is ordered as provided for in subsection (2), the court having jurisdiction shall proceed with the disposition of forfeited bail as follows:

(a) If judgment be rendered or the forfeiture not discharged and the defendant has deposited money as bail, the court with whom it is deposited must, immediately after receiving notice of said judgment or order of forfeiture, pay over the money deposited to the treasury of the city or county wherein the bail was taken.

(b) When judgment is entered in favor of the state or the order of forfeiture is not discharged on any bail, execution may be issued forthwith for levy on stocks or bonds deposited with the court or upon the real estate described in the bail schedule. Such stocks, bonds, and real estate shall be sold in the same manner as in execution sales in civil actions. The proceeds of such sale shall be used to satisfy all court costs and prior encumbrances, if any, and from the balance a sufficient sum to satisfy the judgment or forfeiture shall be paid into the treasury of the city or county wherein the bail bond was taken. The balance shall be returned to the owner. The real estate so sold may be redeemed in the same manner as real estate may be redeemed after execution sales in civil actions.

(c) When judgment is entered in favor of the state and against the sureties or the surety company or when the forfeiture has not been discharged, execution may be issued against the sureties or the surety company in the same manner as executions in civil actions"; in (1), in second sentence, deleted "Except as provided in 87-1-111" and at end substituted "by law" for "in 46-18-243"; at end of (3) substituted "46-9-511" for "subsection (1)"; and made minor changes in style.

Cross-References

Execution, Title 25, ch. 13 and 14.

Execution sale, Title 25, ch. 13, part 7.

Redemption of real property after execution sale, Title 25, ch. 13, part 8.

CHAPTER 10

PRELIMINARY EXAMINATION

Part 1 — General Provisions

46-10-101. Repealed.
46-10-102. Renumbered 46-10-106 by Code Commissioner, 1991.
46-10-103 and 46-10-104 reserved.
46-10-105. Preliminary examination — when held.
46-10-106. Waiver.

Part 2 — Procedure at Preliminary Examination

46-10-201. When examination not public.
46-10-202. Presentation of evidence.
46-10-203. Disposition of defendant.
46-10-204. Record of preliminary examination.

Part 1

General Provisions

46-10-101. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1201.

46-10-102. Renumbered 46-10-106 by Code Commissioner, 1991.

46-10-103 and 46-10-104 reserved.

46-10-105. Preliminary examination — when held. After the initial appearance, in all cases in which the charge is triable in district court, the justice's court shall, within a reasonable time, hold a preliminary examination unless:

(1) the defendant waives a preliminary examination;
(2) the district court has granted leave to file an information;
(3) an indictment has been returned; or
(4) the case is triable in justice's court.

History: En. 95-902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-902(part); amd. Sec. 89, Ch. 800, L. 1991; Sec. 46-7-103, MCA 1989; redes. 46-10-105 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In introductory clause, after "appearance", inserted "in all cases in which the charge is triable in district court"; and made minor changes in style.

Cross-References

Justices' Courts' jurisdiction — preliminary hearings, 3-10-303.

46-10-106. Waiver. If the defendant waives the preliminary examination, the judge shall hold the defendant to answer to the court having jurisdiction of the offense.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(b); amd. Sec. 9, Ch. 116, L. 1979; amd. Sec. 90, Ch. 800, L. 1991; Sec. 46-10-102, MCA 1989; redes. 46-10-106 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Substituted "judge" for "justice"; and made minor change in style.

Part 2

Procedure at Preliminary Examination

46-10-201. When examination not public. The judge may, in the judge's discretion, and shall, upon the request of the defendant, exclude from the preliminary examination each person not officially associated with the case before the court.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(c); amd. Sec. 10, Ch. 116, L. 1979; amd. Sec. 260, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "judge" for "justice"; and made minor changes in style.

46-10-202. Presentation of evidence. (1) The defendant may not enter a plea. The judge shall hear the evidence without unnecessary delay. All witnesses must be examined in the presence of the defendant. The defendant may cross-examine witnesses against the defendant and may introduce evidence in the defendant's own behalf. For purposes of this section, a preliminary examination conducted by the use of two-way electronic audio-video communication that allows all of the participants to be observed and heard by all other participants and that allows the defendant to cross-examine witnesses is considered to be an examination of a witness in the presence of the defendant. Two-way electronic audio-visual communication may not be used unless the defendant's counsel is physically present with his client, unless this requirement is waived by the defendant.

(2) During the examination of a witness or when the defendant is making a statement or testifying, the judge may, and on the request of the defendant or state shall, exclude all other witnesses. The judge may also cause the witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

(3) An objection to evidence on the ground that it has been acquired by unlawful means is not properly made at the preliminary examination. Motions to suppress must be made to the trial court as provided in 46-13-302.

(4) For purposes of a hearing under this chapter, a defendant may, in the discretion of the court, appear before the court either by physical appearance

or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication. A judge may order a defendant's physical appearance in court for a preliminary examination.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part), 95-1203; amd. Sec. 11, Ch. 116, L. 1979; amd. Sec. 4, Ch. 710, L. 1991; amd. Sec. 91, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 710 in (1) inserted fifth and sixth sentences allowing conduct of a preliminary examination by two-way electronic audio-video communication; inserted (4) allowing satisfaction of requirement of appearance of defendant by two-way electronic audio-video communication; and made minor changes in style.

Chapter 800 in (1) and (2) substituted "judge" for "justice"; inserted (3) prohibiting objection to evidence at preliminary examination; and made minor changes in style.

46-10-203. Disposition of defendant. (1) If from the evidence it appears that there is probable cause to believe that an offense has been committed and that the defendant committed it, the judge shall hold the defendant to answer to the court having jurisdiction of the offense.

(2) If it appears from the evidence that there is insufficient probable cause to believe that an offense has been committed or that the defendant committed it, the judge shall dismiss the complaint and discharge the defendant. The discharge of the defendant may not preclude the state from instituting a subsequent prosecution for the same offense.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(part); amd. Sec. 12, Ch. 116, L. 1979; amd. Sec. 92, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) and (2) substituted "judge" for "justice"; inserted (2) concerning insufficient probable cause and discharge; and made minor changes in style.

46-10-204. Record of preliminary examination. (1) The testimony of each witness must be taken by a court-appointed stenographer upon demand by the county attorney, the defendant, or the defendant's counsel.

(2) After concluding the proceeding, if the judge holds the defendant to answer a charge, the judge shall transmit immediately to the clerk of the court having jurisdiction of the offense all papers in the proceeding and any bail taken by the judge.

History: En. 95-1202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1202(d); amd. Sec. 13, Ch. 116, L. 1979; amd. Sec. 93, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "witness", deleted "in cases of homicide, must be reduced to writing as a deposition by a court-appointed stenographer. In cases other than homicide, the testimony of each witness"; in (2) substituted "judge" for "justice" and after "answer" inserted "a charge"; and made minor changes in style.

CHAPTER 11

COMMENCEMENT OF PROSECUTION

Part 1 — Methods of Commencing Prosecution

46-11-101. Methods of commencing prosecution.
46-11-102. Required methods.
46-11-103 through 46-11-109 reserved.
46-11-110. Filing complaint.
46-11-111. Amending complaint.

Part 2 — Filing of Information

46-11-201. Leave to file information.
46-11-202. Repealed.
46-11-203. Time for filing information.
46-11-204. Repealed.
46-11-205. Amending information as to substance or form.

Part 3 — Grand Jury

46-11-301. Summoning grand jury.
46-11-302. Challenges to grand jury or grand jurors.
46-11-303. Foreman.
46-11-304. Appointing special prosecutor.
46-11-305 and 46-11-306 reserved.
46-11-307. Closed hearing.
46-11-308. Who may be present.
46-11-309 reserved.
46-11-310. Duties of grand jurors.
46-11-311. Charge to grand jury.
46-11-312. Repealed.
46-11-313. Subpoena of witnesses.
46-11-314. Reception of evidence.
46-11-315. Advice and assistance to grand jury.
46-11-316. Recorded proceedings.
46-11-317. Secrecy of proceedings — disclosure.
46-11-318. Discharge of grand jury.
46-11-319. Expenses of grand jury.
46-11-320 through 46-11-330 reserved.
46-11-331. Finding an indictment.
46-11-332. Presenting the indictment.
46-11-333. Repealed.

Part 4 — The Charge

46-11-401. Form of charge.
46-11-402. Repealed.
46-11-403. Renumbered 46-11-205 by Code Commissioner, 1991.
46-11-404. Joinder of offenses and defendants.
46-11-405. Discharge of codefendant.
46-11-406 through 46-11-409 reserved.
46-11-410. Multiple charges.

Part 5 — Effect of Multiple Charges and Former Prosecutions

46-11-501. Repealed.
46-11-502. Renumbered 46-11-410 by Code Commissioner, 1991.

46-11-503. Prosecution based on same transaction barred by former prosecution.
46-11-504. Former prosecution in another jurisdiction.
46-11-505. Former prosecution not a bar.

Part 6 — Ensuring Availability of Material Witness Preserving Testimony

46-11-601. Recognizance by or deposition of witness.

Part 7 — Pretrial Proceedings—Confidentiality

46-11-701. Pretrial proceedings — exclusion of public and sealing of records.

Chapter Cross-References

Initiation of criminal proceedings — grand jury, Art. II, sec. 20, Mont. Const.

Repeal of law creating criminal offenses — when bar to prosecution, 1-2-205.

Attorney General or County Attorney to prosecute — Legislative Audit Act, 5-13-310.

Power of Commissioner of Political Practices, Title 13, ch. 37, part 1.

Duty of County Attorney — election law violations, 13-37-124, 13-37-125.

Immunity from misdemeanor prosecution — suit for injunction, 30-14-222.

County Attorney to prosecute violations of pharmacist regulations, 37-7-203.

Prosecution — unemployment compensation, 39-51-309.

Statute of Limitations, 45-1-205, 45-1-206.

Commencing prosecution — official misconduct, 45-7-401.

Immunity for witness — Montana Consumer Product Safety Act of 1975, 50-30-108.

Notice before prosecution — Montana Consumer Product Safety Act of 1975, 50-30-302, 50-30-303.

Notice and chance to present views before criminal prosecution — Montana Food, Drug, and Cosmetic Act, 50-31-504, 50-31-505.

Part 1

Methods of Commencing Prosecution

46-11-101. Methods of commencing prosecution. A prosecution may be commenced by:

(1) a complaint;

(2) an information following a preliminary examination or waiver of a preliminary examination;

(3) an information after leave of court has been granted; or

(4) an indictment upon a finding by a grand jury.

History: En. 95-1501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1501; amd. Sec. 94, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning deleted "When authorized by law"; and made minor changes in style.

Cross-References

General time limitations — prosecution is commenced when an indictment is found or an information or complaint is filed, 45-1-205.

46-11-102. Required methods. (1) All prosecutions of offenses charged in a district court must be by indictment or information.

(2) All other prosecutions of offenses must be by complaint.

History: En. 95-1502 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 184, L. 1977; R.C.M. 1947, 95-1502; amd. Sec. 95, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: After "offenses" substituted "charged" for "triable"; and made minor changes in style.

46-11-103 through 46-11-109 reserved.

46-11-110. Filing complaint. (1) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine the complainant and any affidavits, if filed, to determine whether a charge may be filed.

(2) If it appears from an affidavit filed with the charge or from testimony of the complainant that there is probable cause to believe that an offense has been committed and that the person against whom the charge is made has committed it, the court shall issue a summons or an arrest warrant.

History: En. Sec. 96, Ch. 800, L. 1991.

46-11-111. Amending complaint. A court may allow a complaint to be amended under the same circumstances and in the same manner as an information as provided in 46-11-205.

History: En. Sec. 97, Ch. 800, L. 1991.

Part 2

Filing of Information

46-11-201. Leave to file information. (1) The prosecutor may apply directly to the district court for permission to file an information against a named defendant. If the defendant named is a district court judge, the prosecutor shall apply directly to the supreme court for leave to file the information.

(2) An application must be by affidavit supported by evidence that the judge or chief justice may require. If it appears that there is probable cause to believe that an offense has been committed by the defendant, the judge or chief justice shall grant leave to file the information, otherwise the application is denied.

(3) When leave to file an information has been granted, a warrant or summons may issue for the defendant's arrest or appearance.

(4) When leave is granted to file an information against a district court judge, the chief justice shall designate and direct a judge of the district court of another district to preside at the trial of the information and hear and determine all pleas and motions affecting the defendant under the information before and after judgment. All necessary records must be transferred to the clerk of the district court of the district in which the action arose.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(a), (b); amd. Sec. 98, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning of first sentence, substituted "prosecutor" for "county attorney" and inserted second sentence concerning judge as defendant; in (2), in two places after "judge", inserted "or chief justice"; in (3), after "warrant", inserted "or summons" and after "arrest" substituted "or appearance" for "and he must be brought before the court unless the court orders otherwise"; inserted (4) concerning filing of information against District Court Judge; and made minor changes in style.

Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

46-11-202. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1301(c).

46-11-203. Time for filing information. (1) After a finding of probable cause following a preliminary examination or waiver of a preliminary examination or after leave of court has been granted, the prosecutor shall file within 30 days in the proper district court an information charging the defendant with the offense or any other offense supported by probable cause.

(2) Unless good cause to the contrary is shown, the court shall dismiss the prosecution if an information is not filed within 30 days as required in subsection (1).

History: En. 95-1302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1302; amd. Sec. 100, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, substituted "a finding of probable cause following a preliminary examination or waiver of a" for "the defendant has been examined and held to answer or has waived", after "examination" deleted "as provided in chapter 10", after "granted" deleted "as provided in 46-11-201 and 46-11-202", substituted "prosecutor" for "county attorney", after "offense" deleted "for which he is held to answer", at end substituted "supported by probable cause" for "disclosed by the evidence", and deleted second sentence that read: "If the county attorney fails to file the information within the time specified, he may be found guilty of contempt and may be prosecuted for neglect of duty"; inserted (2) concerning dismissal for failure to timely file information; and made minor change in style.

46-11-204. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1303.

46-11-205. Amending information as to substance or form. (1) The court may allow an information to be amended in matters of substance at any time, but not less than 5 days before trial, provided that a motion is filed in a timely manner, states the nature of the proposed amendment, and is accompanied by an affidavit stating facts that show the existence of probable cause to support the charge as amended. A copy of the proposed amended information must be included with the motion to amend the information.

(2) If the court grants leave to amend the information, the defendant must be arraigned on the amended information without unreasonable delay and must be given a reasonable period of time to prepare for trial on the amended information.

(3) The court may permit an information to be amended as to form at any time before a verdict or finding is issued if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

History: En. 95-1505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 431, L. 1977; R.C.M. 1947, 95-1505; amd. Sec. 1, Ch. 62, L. 1981; amd. Sec. 99, Ch. 800, L. 1991; Sec. 46-11-403, MCA 1989; redes. 46-11-205 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Deleted (1)(b) that read: "(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file"; in (1), in first sentence after "motion", substituted "is filed in a timely manner" for "for leave to amend stating" and after "affidavit" deleted "in compliance with 46-11-201(1)"; in (2), after "If", deleted "the motion is timely and the amended information is supported by probable cause"; deleted former (3) that read: "(3) No charge may be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant"; and made minor changes in style.

Part 3

Grand Jury

Part Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

Grand jury defined, 3-15-103.

Grand jury — composition, summoning, impaneling, Title 3, ch. 15, part 6.

46-11-301. Summoning grand jury. (1) A grand jury may only be drawn and summoned when the district judge, in his discretion, considers a grand jury to be in the public interest and orders the grand jury to be drawn or summoned. The composition and drawing of a grand jury must be in accordance with the provisions of Title 3, chapter 15, part 6.

(2) The district judge may direct the selection of one or more alternate jurors, who shall sit as regular jurors before an indictment is found or a grand jury investigation is concluded. A member of the jury who becomes unable to perform the juror's duty may be replaced by an alternate.

History: En. 95-1401 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 3, L. 1973; R.C.M. 1947, 95-1401(part); amd. Sec. 101, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "grand jury", substituted "to be in the public interest and orders the grand jury to be drawn or summoned" for "necessary and shall so order"; and made minor changes in style.

46-11-302. Challenges to grand jury or grand jurors. (1) The county attorney or attorney general may challenge the panel of a grand jury on the ground that the grand jury was not selected, drawn, or summoned according to law and may challenge an individual juror on the ground that the juror is not legally qualified. Challenges must be made before the administration of the oath of the jurors, may be oral or in writing, and must be tried and decided by the court.

(2) At any time for cause shown, the district court may excuse or discharge a juror either temporarily or permanently, and in the latter event, the court may impanel another person in place of the juror discharged.

(3) A motion to dismiss the indictment may be based on the ground that the grand jury was not selected, drawn, or summoned according to law or that an individual juror was not legally qualified. An indictment may not be dismissed on the ground that one or more members are not legally qualified if it appears from the record kept pursuant to this part that eight or more jurors, after deducting those not legally qualified, concurred in finding the indictment.

History: En. 95-1402 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 3, L. 1973; R.C.M. 1947, 95-1402; amd. Sec. 102, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning of first sentence, substituted "county attorney or attorney general" for "state" and near beginning of second sentence inserted "must be made before the administration of the oath of the jurors"; in (3), after "pursuant to", substituted "this part" for "46-11-303"; and made minor changes in style.

46-11-303. Foreman. The district court shall appoint one of the jurors to be foreman. The foreman has the power to administer oaths or affirmations and shall sign all indictments. The foreman or another juror designated by the foreman shall keep a record of the number of jurors concurring in the finding of every indictment and shall file the record with the clerk of court, but the record may not be made public except on order of the district court.

History: En. 95-1403 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1403; amd. Sec. 103, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In two places, before "court", inserted "district"; and made minor changes in style.

46-11-304. Appointing special prosecutor. When the county attorney or attorney general is the subject of a grand jury investigation, the district court shall appoint a special prosecutor. If a special prosecutor is appointed, the county attorney's or attorney general's office may not participate in an official capacity, but staff members may appear as witnesses.

History: En. Sec. 104, Ch. 800, L. 1991.

46-11-305 and 46-11-306 reserved.

46-11-307. Closed hearing. Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed. This requirement may not affect a defendant's discovery rights after the filing of the indictment.

History: En. Sec. 106, Ch. 800, L. 1991.

46-11-308. Who may be present. The prosecutor, witnesses, interpreters, and a stenographer or operator of a recording device used for the purpose of taking the evidence may be present while the grand jury is in session. No person other than the jurors may be present while the grand jury is deliberating or voting.

History: En. Sec. 111, Ch. 800, L. 1991.

46-11-309 reserved.

46-11-310. Duties of grand jurors. The grand jury shall inquire into those matters as directed by the court summoning the jury and shall inquire into other matters as presented by the prosecutor.

History: En. Sec. 107, Ch. 800, L. 1991.

46-11-311. Charge to grand jury. When a grand jury is impaneled and sworn, it must be charged by the judge who summoned it. In making the charge, the district court shall instruct the jury as to its duties and the matters that jurors may consider. The prosecutor may bring additional matters before the grand jury that are consistent with the original charge or that are developed during the proceedings.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(a); amd. Sec. 105, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In second sentence, before "court", inserted "district", after "shall" substituted "instruct the jury" for "give the grand jurors such information as it deems proper or as is required by law", and at end substituted "the matters that jurors may consider" for "as to any charges of public offenses known to the court and likely to come before the grand jury" and inserted last sentence concerning additional matters developed during proceedings; and made minor changes in style.

46-11-312. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part), 95-1405(a) thru (e).

46-11-313. Subpoena of witnesses. (1) A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the foreman of the grand jury, or by the judge of the district court.

(2) The fees and mileage of witnesses subpoenaed pursuant to this section must be the same as those for witnesses in criminal actions.

(3) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this section, including the provisions of Title 46, chapter 15, part 1.

History: En. 95-1407 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 16, Ch. 184, L. 1977; R.C.M. 1947, 95-1407; amd. Sec. 108, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) deleted last sentence that read: "The subpoena may be directed to witnesses in the state in support of the prosecution, those witnesses whose testimony, in the opinion of the issuer, is material in an investigation before the grand jury, and such other witnesses as the grand jury may direct"; inserted (2) concerning fees and mileage of witnesses; and inserted (3) concerning applicability of subpoenas in criminal actions.

46-11-314. Reception of evidence. In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before it or that furnished by legal evidence or the deposition of a witness.

History: En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; R.C.M. 1947, 95-1408(1), (2); amd. Sec. 109, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: After "legal" deleted "documentary" and at end deleted "in the cases mentioned in chapter 15, part 2, of this title"; and deleted (2) that read: "(2) The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it. If it has reason to believe other evidence within its reach will explain away the charge, it shall order the evidence to be produced and for that purpose may require the county attorney to issue process for witnesses".

46-11-315. Advice and assistance to grand jury. (1) The grand jury may at all times ask the advice of the judge. Unless advice is asked, the judge may not be present during the sessions of the grand jury.

(2) The prosecutor may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may interrogate witnesses before the grand jury whenever the prosecutor finds it necessary.

(3) Subject to the approval of the district court, the county attorney may employ a special prosecutor, investigators, interpreters, and experts at agreed-upon compensation to be first approved by the court.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(1) thru (4); amd. Sec. 110, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at end of first sentence, substituted "the judge" for "the court or the judge thereof, the attorney general, or the county attorney"; in (2), at beginning, substituted "prosecutor" for "county attorney or the attorney general" and deleted second and third sentences that read: "When a charge against or involving the county attorney, deputy county attorney, or anyone employed by or connected with the office of the county attorney is being investigated by the grand jury, the county attorney, deputy county attorney, or all or any one or more of them shall not be allowed to be present in an official capacity before the grand jury when the charge is being investigated. They or he shall only be present while a witness and after appearing as a witness shall leave the place where the grand jury is holding session"; in (3) substituted present language concerning employment of certain people for former (3) that read: "(3) When requested to do so by the grand jury of any county, the attorney general or county attorney may employ special counsel and investigators who shall investigate and present the evidence acquired in such investigation to the grand jury"; deleted (4) that read: "(4) The grand jury or county attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, the interpreter may be present at the examination of witnesses before the grand jury. The compensation for the services of the interpreter constitutes a charge against the county and shall be fixed by the grand jury in an amount to be approved by the court. It shall be paid out of the county treasury on a warrant of the county auditor upon an order of the judge of the district court"; and made minor changes in style.

46-11-316. Recorded proceedings. (1) The grand jury shall either appoint a stenographer to take in shorthand the testimony of witnesses or the testimony must be taken by a recording device, but the record so made must include the testimony of all witnesses on that particular investigation.

(2) The stenographic reporter or operator of a recording device shall, within 30 days after an indictment has been found, certify and file with the clerk of the district court the shorthand notes or the recordings made and an original transcript of the notes or recordings.

(3) An unintentional failure of any recording to reproduce all or any portion of a proceeding may not affect the validity of the prosecution.

History: En. 95-1406 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 15, Ch. 184, L. 1977; R.C.M. 1947, 95-1406(5); amd. Sec. 112, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) deleted last sentence that read: "The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the clerk of the district court"; deleted former (2) that read: "(2) The stenographer and any typist who transcribes the stenographer's notes or recordings shall be sworn by the foreman not to disclose any testimony or the names of any witnesses except when so ordered by the court"; in (2), near beginning after "reporter", inserted "or operator of a recording device", after "shall" inserted "within 30 days after an indictment has been found", after "court" inserted "the shorthand notes or the recordings made and", and at end substituted "or recordings" for "and a copy thereof and as many additional copies as there are defendants" and deleted second and third sentences that read: "The reporter shall complete the certification and filing within 10 days after the indictment has been found unless the court for good cause makes an order extending the time. The clerk of the district court shall deliver the original of the transcript filed with him to the county attorney immediately upon his receipt thereof, retain one copy for use only by judges in proceedings relating to the indictment, and deliver a copy of the transcript to each defendant or his attorney"; inserted (3) concerning failure of recording; and made minor changes in style.

46-11-317. Secrecy of proceedings — disclosure. (1) Disclosure of matters occurring before the grand jury other than its deliberations and the vote of any juror may be made to any prosecutor or investigator of this state and prosecutors or investigators from any other state or the federal government for use in the performance of the prosecutor's or investigator's duty.

(2) A grand juror, an interpreter, a stenographer, an operator of a recording device, a typist who transcribes recorded testimony, or the prosecutor may not disclose matters occurring before the grand jury except as otherwise permitted by Title 46. An obligation of secrecy may not be imposed on a person except in accordance with this section. A knowing violation of this section may be punishable as contempt of court.

(3) Disclosure otherwise prohibited by this section of matters occurring before the grand jury may be made:

(a) if directed by the district court prior to or in combination with a judicial proceeding;

(b) when permitted by the district court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury; or

(c) when permitted by the district court, to a defendant pursuant to a proper discovery motion.

History: En. 95-1409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1409; amd. Sec. 113, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "made to", substituted "any prosecutor or investigator of this state and prosecutors or investigators from any other state or the federal government" for "county attorney"; in (2), in first sentence after "juror", deleted "attorney", after "testimony" inserted "or the prosecutor", and at end substituted "except as otherwise permitted by Title 46" for "only when so directed by the court preliminary to or in connection with a judicial proceeding" and inserted second and third sentences concerning obligation of secrecy and contempt; inserted (3) and (3)(a) concerning disclosure directed by District Court; at end of (3)(b) deleted "under 46-11-302(2)"; substituted (3)(c) concerning disclosure to defendant pursuant to discovery for "No obligation of secrecy may be imposed upon any person except in accordance with this rule"; deleted former (2) that read: "(2) The court may direct that an indictment shall be kept secret until the defendant is in custody or has given bail, and no person shall disclose the finding of the indictment except when necessary for the issuance and execution of a warrant or summons"; and made minor changes in style.

46-11-318. Discharge of grand jury. When the grand jury certifies the completion of business before it and the district court concurs, the grand jury must be discharged by the district court.

History: En. 95-1404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1404(part); amd. Sec. 114, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In two places, before "court", inserted "district"; and made minor changes in style.

46-11-319. Expenses of grand jury. (1) Except as provided in subsection (2), all expenses of the grand jury, including expenses for special prosecutors, experts, investigators, and interpreters, if any, must be paid by the treasurer of the county out of the general fund of the county upon warrants drawn by the county auditor or by the clerk of the district court upon a written order of the judge of the district court of the county.

(2) If the county has a district court fund, all expenses of a grand jury must be paid out of that fund.

(3) Subject to the procedures established by law, the state shall reimburse the court for juror and witness fees and witness expenses. The county shall deposit the amount reimbursed in its general fund unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in that fund.

History: En. 95-1405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1405(f); amd. Sec. 4, Ch. 66, L. 1985; amd. Sec. 12, Ch. 680, L. 1985; amd. Sec. 115, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "special", substituted "prosecutors" for "counsel", before "investigators" inserted "experts", and after "investigators" inserted "and interpreters"; in (3), in first sentence after "established", substituted "by law" for "under 3-5-902(1)", after "reimburse the" substituted "court" for "county", after "fees" deleted "as provided in 3-5-903", and at end deleted "as provided in 46-15-104"; and made minor changes in style.

46-11-320 through 46-11-330 reserved.

46-11-331. Finding an indictment. (1) The grand jury shall find an indictment when all the evidence before it taken together would in its judgment warrant a conviction by a trial jury. An indictment may be found only upon the concurrence of at least eight grand jurors.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge.

History: (1)En. 95-1408 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 17, Ch. 184, L. 1977; Sec. 95-1408, R.C.M. 1947; (2)En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; Sec. 95-1410, R.C.M. 1947; R.C.M. 1947, 95-1408(3), 95-1410(a); amd. Sec. 116, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence after "together", deleted "if unexplained or uncontradicted"; deleted second sentence of former (2) that read: "When so found, it must be endorsed, "a true bill", and the endorsement must be signed by the foreman of the grand jury"; inserted (2) concerning concurrence by eight jurors for indictment; and made minor changes in style.

46-11-332. Presenting the indictment. (1) An indictment, when found by the grand jury, must be signed by and presented by the foreman to the district court in the presence of the grand jury and must be filed with the clerk. The district court shall then issue a warrant or summons for the defendant.

(2) If a complaint or information is pending against the defendant and eight jurors do not concur in finding an indictment, the foreman shall report the decision to the district court judge.

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(b); amd. Sec. 117, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence after "must be", inserted "signed by and" and before "court" inserted "district" and inserted second sentence concerning issuance of warrant or summons; in (2) inserted sentence concerning concurrence of eight jurors for indictment and deleted "When an indictment is filed against a district court judge, it must be transmitted directly to the supreme court, which shall thereupon designate and direct a judge of the district court of another district to preside at the trial of such indictment and hear and determine all pleas and motions affecting the defendant thereunder before and after judgment"; and made minor changes in style.

46-11-333. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1410 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 3, L. 1973; R.C.M. 1947, 95-1410(c), (d).

Part 4

The Charge

Part Cross-References

Joinder of charges — conspiracy, 45-4-102.

Alternate charges — attempt, 45-4-103.

46-11-401. Form of charge. (1) The charge must be in writing and in the name of the state or the appropriate municipality and must specify the district court in which the charge is filed. The charge must be a plain, concise, and definite statement of the offense charged, including the name of the offense, whether the offense is a misdemeanor or felony, the name of the person charged, and the time and place of the offense as definitely as can be determined. The charge must state for each count the official or customary citation of the statute, rule, regulation, or other provision of law that the defendant is alleged to have violated.

(2) If the charge is by information or indictment, it must include endorsed on the information or indictment the names of the witnesses for the state, if known.

(3) If the charge is by complaint, it must be signed on oath by a person having knowledge of the facts or by the prosecutor.

(4) If the charge is by information, it must be signed by the prosecutor. If the charge is by indictment, it must be signed by the foreman of the grand jury.

(5) The district court, on motion of the defendant, may strike surplusage from the indictment or information.

(6) A charge may not be dismissed because of a formal defect that does not tend to prejudice a substantial right of the defendant.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(a) thru (e); amd. Sec. 118, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence after "municipality", deleted "if a violation of a municipal ordinance is charged" and before "court" inserted "district"; deleted (1)(c)(iii) that read: "(iii) stating the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended" and inserted "whether the offense is a misdemeanor or a felony, the name of the person charged, and"; deleted (1)(c)(v) that read: "(v) stating the name of the accused, if known, and, if not known, designating the accused by any name or description by which he can be identified with reasonable certainty"; at end of (3) substituted "prosecutor" for "county attorney"; in (4), at end of first sentence, substituted "prosecutor" for "county attorney or by his deputy"; inserted (5) concerning striking surplusage; inserted (6) preventing dismissal due to formal defect; and made minor changes in style.

46-11-402. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1503(f).

46-11-403. Renumbered 46-11-205 by Code Commissioner, 1991.

46-11-404. Joinder of offenses and defendants. (1) Two or more offenses or different statements of the same offense may be charged in the same charging document in a separate count, or alternatively, if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same transactions connected together or constituting parts of a common scheme or plan. Allegations made in one count may be incorporated by reference in another count.

(2) If two or more charging documents are filed in the case, the court may order them to be consolidated.

(3) The prosecution is not required to elect between the different offenses set forth in the charging document, and the defendant may be convicted of any number of the offenses charged except as provided in 46-11-410. Each offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

(4) Two or more defendants may be charged in the same indictment, information, or complaint if they are alleged to have participated in the same transaction constituting an offense or offenses. The defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

History: En. 95-1504 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(1) thru (4); amd. Sec. 119, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Substituted first sentence of (1) concerning charging of two or more offenses of similar character or based on same transaction or part of a common scheme for former sentence that read: "An indictment, information, or complaint may charge two or more different offenses connected together in their commission, different statements of the same offense, or two or more different offenses of the same class under separate counts"; in (3), in first sentence after "offenses", substituted "set forth in the charging document" for "or counts set forth in the indictment, information, or complaint" and at end inserted exception clause; deleted former (2) that read: "(2) The court in which the case is triable, in the interests of justice and for good cause shown, may, in its discretion, order that the different offenses or counts set forth in the indictment, information, or complaint be tried separately or divided into two or more groups and each of the groups tried separately. An acquittal of one or more counts shall not be considered an acquittal of any other count"; in (3), in first sentence after "information", inserted "or complaint" and after "same" deleted "series of acts or"; deleted former (4) that read: "(4) If it appears that a defendant or the state is prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate charges or defendants for trial, the court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require"; and made minor changes in style.

46-11-405. Discharge of codefendant. (1) When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the county attorney, direct any defendant to be discharged so that he may be a witness for the state.

(2) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, the court must order him to be discharged before the evidence is closed that he may be a witness for his codefendant.

History: En. Sec. 187, p. 245, Bannack Stat.; re-en. Sec. 308, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Rev. Stat. 1879; re-en. Sec. 309, 3d Div. Comp. Stat. 1887; amd. Secs. 2075, 2076, Pen. C. 1895; re-en. Secs. 9276, 9277, Rev. C. 1907; re-en. Secs. 11974, 11975, R.C.M. 1921; Cal. Pen. C. Secs. 1099, 1100; re-en. Secs. 11974, 11975, R.C.M. 1935; Secs. 94-7206, 94-7207, R.C.M. 1947; redes. 95-1504(d) and (e) by Sec. 29, Ch. 513, L. 1973; amd. Sec. 19, Ch. 184, L. 1977; R.C.M. 1947, 95-1504(5), (6).

46-11-406 through 46-11-409 reserved.

46-11-410. Multiple charges. (1) When the same transaction may establish the commission of more than one offense, a person charged with the conduct may be prosecuted for each offense.

(2) A defendant may not, however, be convicted of more than one offense if:

(a) one offense is included in the other;

(b) one offense consists only of a conspiracy or other form of preparation to commit the other;

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a specific instance of the conduct; or

(e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of the conduct constitute separate offenses.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(2); amd. Sec. 120, Ch. 800, L. 1991; Sec. 46-11-502, MCA 1989; redes. 46-11-410 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (2)(d), after "prohibit a", deleted "designated kind of conduct generally and the other to prohibit a"; and made minor changes in style.

Part 5

Effect of Multiple Charges and Former Prosecutions

Part Cross-References

Rights of accused — double jeopardy, Art. II, sec. 25, Mont. Const.

46-11-501. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(1).

46-11-502. Renumbered 46-11-410 by Code Commissioner, 1991.

46-11-503. Prosecution based on same transaction barred by former prosecution. (1) When two or more offenses are known to the prosecutor, are supported by probable cause, and are consummated prior to the original charge and jurisdiction and venue of the offenses lie in a single court, a prosecution is barred if:

(a) the former prosecution resulted in an acquittal. There is an acquittal whenever the prosecution results in a finding of not guilty by the trier of fact or in a determination that there is insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense that is subsequently set aside is an acquittal of the greater offense that was charged.

(b) the former prosecution resulted in a conviction that has not been set aside, reversed, or vacated;

(c) after a charge had been filed, the prosecution was terminated by a final order or judgment for the defendant that has not been set aside, reversed, or vacated; or

(d) the former prosecution was terminated for reasons not amounting to an acquittal and takes place:

(i) in a jury trial, after the first witness is sworn but before a verdict is returned; or

(ii) in a nonjury trial, after the first witness is sworn but before a judgment as to guilt or innocence is reached.

(2) A prosecution based upon the same transaction as a former prosecution is not barred under subsection (1)(d) when:

(a) the defendant consents to the termination or waives his right to object to the termination; or

(b) the trial court finds that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with law;

(ii) there is a legal defect in the proceedings that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(3); amd. Sec. 121, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "known to the", substituted "prosecutor, are supported by probable cause" for "attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were", near end, after "prosecution" deleted "based upon the same transaction as a former prosecution", and after "barred" deleted "by such former prosecution under the following circumstances"; in (1)(b), after "prosecution", substituted "resulted in a conviction" for "was terminated, after a complaint had been filed on a misdemeanor charge or after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant which", and at end, after "vacated", deleted "and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense"; deleted former (3) that read: "(3) The former prosecution resulted in a conviction. There has been a conviction whenever the prosecution resulted in:

(a) a judgment of conviction which has not been reversed or vacated;

(b) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(c) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant"; inserted (1)(c) concerning termination by final order or judgment for defendant; at beginning of (1)(d) substituted "the former prosecution was terminated" for former introductory language of (4) that read: "(4) The former prosecution was improperly terminated. Except as provided in this subsection (4), there is an improper termination of a prosecution whenever the termination is"; at beginning of (1)(d)(i) inserted "in a jury trial" and at end inserted "is returned"; inserted (1)(d)(ii) concerning termination in a nonjury trial; in (2)(b), after "court", deleted "in the exercise of its discretion"; in (2)(b)(iii), after "conduct", deleted "in or outside the courtroom"; and made minor changes in style.

46-11-504. Former prosecution in another jurisdiction. When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate, overlapping, or concurrent jurisdiction in this state, a prosecution in any other jurisdiction is a bar to a subsequent prosecution in this state under the same circumstances barring further prosecution in this state if:

(1) the first prosecution resulted in an acquittal or in a conviction and the subsequent prosecution is based on an offense arising out of the same transaction; or

(2) the former prosecution was terminated, after the charge had been filed, by an acquittal or by a final order or judgment for the defendant that has not been set aside, reversed, or vacated and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact that must be established for conviction of the offense for which the defendant is subsequently prosecuted.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(4); amd. Sec. 122, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At end of introductory clause inserted "barring further prosecution in this state if"; in (1), after "conviction", deleted "as defined in 46-11-503"; near beginning of (2) substituted "charge" for "complaint" and after "filed" deleted "on a misdemeanor charge or after the information had been filed or the indictment found on a felony charge"; and made minor changes in style.

46-11-505. Former prosecution not a bar. A prosecution is not a bar if:

(1) the former prosecution was before a court that lacked jurisdiction over the defendant or the offense; or

(2) the former prosecution resulted in a judgment of conviction that was held invalid in a postconviction hearing.

History: En. 95-1711 by Sec. 6, Ch. 513, L. 1973; amd. Sec. 25, Ch. 184, L. 1977; R.C.M. 1947, 95-1711(5); amd. Sec. 123, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At end of introductory clause deleted "within the meaning of 46-11-503 and 46-11-504 under any one or more of the following circumstances"; deleted former (2) that read: "(2) The former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed"; and made minor changes in style.

Part 6

Ensuring Availability of Material Witness Preserving Testimony

Part Cross-References

Detention of witnesses in criminal proceedings, Art. II, sec. 23, Mont. Const.

46-11-601. Recognizance by or deposition of witness. (1) If the defendant is held to answer after a preliminary examination or after the defendant has waived a preliminary examination or after the district court has granted leave to file an information or after an indictment has been returned, the judge may:

(a) require any material witness for the state or defendant to enter into a written undertaking to appear at the trial; and

(b) provide for the forfeiture of a sum certain in the event the witness does not appear at the trial.

(2) Any witness who refuses to enter into a written undertaking may be remanded to custody but shall not be held longer than is necessary to take his deposition. After the deposition is taken, the witness must be immediately discharged.

(3) Such deposition must be taken in the presence of the county attorney and the defendant and his counsel unless either the county attorney or the defendant and his counsel fail to attend after reasonable notice of the time and place set for taking the deposition.

History: En. 95-1204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1204.

Cross-References

Depositions in criminal proceedings, Art. II, sec. 23, Mont. Const.

Clerk of District Court to keep witness book, 3-5-510.

Procedure in reference to witnesses' certificates, 3-5-511.

Witness from another state summoned to testify in this state, 46-15-113.

When depositions taken, 46-15-201.

Procedure for taking depositions, 46-15-202.

Part 7

Pretrial Proceedings — Confidentiality

46-11-701. Pretrial proceedings — exclusion of public and sealing of records. (1) Except as provided in this section, pretrial proceedings and records of those proceedings are open to the public. If, at the pretrial proceedings, testimony or evidence is presented that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information until the impaneling of the jury or until an earlier time consistent with the administration of justice.

(2) The defendant may move that all or part of the proceeding be closed to the public, or with the consent of the defendant, the judge may take action on the judge's own motion.

(3) The judge may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a motion to suppress, and may seal the record only if:

(a) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial; and

(b) the prejudicial effect of the information on trial fairness cannot be avoided by any reasonable alternative means.

(4) Whenever all or part of any pretrial proceeding is held in chambers or otherwise closed to the public under this section, a complete record must be kept and made available to the public following the completion of the trial or earlier if consistent with trial fairness.

(5) When the judge determines that all or part of a document filed in support of a charge or warrant would present a clear and present danger to the defendant's right to a fair trial, the document or portion of the document must be sealed until the trial is completed unless the document or portion of the document must be used for trial fairness.

(6) An affidavit filed in support of a motion for leave to file a charge or warrant must be sealed unless the judge determines that disclosure of the information in the affidavit is required to protect the health, safety, or welfare of the public.

History: En. Sec. 124, Ch. 800, L. 1991.

CHAPTER 12

ARRAIGNMENT OF DEFENDANT

Part 1 — General Provisions

46-12-101. Repealed.
46-12-102. Place of arraignment.
46-12-103. Repealed.
46-12-104. Bringing defendant into court.
46-12-105. Joint defendants.

Part 2 — Procedure on Arraignment

46-12-201. Manner of conducting arraignment — use of two-way electronic audio-video communication — exception.
46-12-202. Renumbered 46-12-210 by Code Commissioner, 1991.
46-12-203. Time allowed to answer.
46-12-204. Plea alternatives.
46-12-205. Record of arraignment.
46-12-206. Renumbered 46-12-213 by Code Commissioner, 1991.
46-12-207 through 46-12-209 reserved.

46-12-210. Advice to defendant.
46-12-211. Plea agreement procedure.
46-12-212. Determining accuracy of plea.
46-12-213. Harmless error.

Chapter Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Part 1

General Provisions

46-12-101. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1601 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1601.

46-12-102. Place of arraignment. The defendant must be arraigned in the court that has trial jurisdiction of the charge.

History: En. 95-1602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1602; amd. Sec. 130, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: After "court" substituted "that has trial jurisdiction of the charge" for "in which the indictment, information, or complaint is filed unless before arraignment the cause has been removed to another court, in which case he shall be arraigned in that court".

46-12-103. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1603; amd. Sec. 5, Ch. 710, L. 1991.

46-12-104. Bringing defendant into court. The court may direct any official who has custody of the defendant to bring him before the court to be arraigned.

History: En. 95-1604 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1604.

46-12-105. Joint defendants. Defendants who are jointly charged may be arraigned separately or together in the discretion of the court.

History: En. 95-1605 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1605.

Part 2

Procedure on Arraignment

46-12-201. Manner of conducting arraignment — use of two-way electronic audio-video communication — exception. (1) Arraignment must be conducted in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead. For purposes of this chapter, an arraignment that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard in the courtroom by all present, is considered to be an arraignment in open court.

(2) The court shall inquire of the defendant or the defendant's counsel the defendant's true name, and if the defendant's true name is given as any other than that used in the charge, the court shall order the defendant's name to be substituted for the name under which the defendant is charged.

(3) The court shall determine whether the defendant is under any disability that would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until the court determines the defendant is able to proceed.

(4) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before a court for an arraignment, this requirement may, in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the defendant and the judge can see each other simultaneously and converse with each other, so that the defendant and his counsel, if any, can communicate privately, and so that the defendant and his counsel are both physically present in the same place during the two-way electronic audio-video communication. The defendant may waive the requirement that his counsel be in the defendant's physical presence during the two-way electronic audio-video communication.

(5) A judge may order a defendant's physical appearance in court for arraignment. In a felony case, a judge may not accept a plea of guilty from a defendant not physically present in the courtroom.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(a), (b), (c); amd. Sec. 6, Ch. 710, L. 1991; amd. Sec. 131, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 710 in (1) inserted third sentence allowing an arraignment made by two-way electronic audio-video communication to be considered an arraignment in open court; inserted (4) allowing an arraignment to be made either physically or by two-way electronic audio-video communication; inserted (5) allowing a judge to order defendant's physical appearance in court for arraignment and disallowing acceptance of a guilty plea in a felony case from a defendant not physically present in the courtroom; and made minor changes in style.

Chapter 800 in (1) inserted "and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead"; in (2) deleted second sentence that read: "The subsequent proceedings must be conducted with the defendant charged under that name, but in the discretion of the court, the defendant may also be referred to by the name by which he was first charged"; and made minor changes in style.

46-12-202. Renumbered 46-12-210 by Code Commissioner, 1991.

46-12-203. Time allowed to answer. If on the arraignment the defendant requires it, he must be allowed a reasonable time, not less than 1 day, to answer or otherwise plead to the indictment, information, or complaint. The answer may include appropriate pretrial motions.

History: En. 95-1607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1607.

Cross-References

Defendant's right to reasonable time for preparation of trial after plea, 46-16-106.

46-12-204. Plea alternatives. (1) A defendant may plead guilty or not guilty. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) The court may not accept a plea of guilty without first determining that the plea is voluntary and not the result of force or threats or of promises apart from the plea agreement. The court shall also inquire as to whether the defendant's willingness to plead guilty results from prior discussions between the prosecutor and the defendant or the defendant's attorney.

(3) With the approval of the court and the consent of the prosecutor, a defendant may enter a plea of guilty, reserving the right, on appeal from the judgment, to review the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, the defendant must be allowed to withdraw the plea.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part); amd. Sec. 2, Ch. 606, L. 1985; amd. Sec. 132, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at end of first sentence, deleted "to the indictment, information, or complaint"; and in second sentence, after "plead", deleted "to the indictment, information, or complaint" and inserted "or if a defendant corporation fails to appear, the court"; in (2), in first sentence after "voluntary", deleted "with an understanding of the charge" and inserted "and not the result of force or threats or of promises apart from the plea agreement" and inserted last sentence concerning prior discussions with prosecutor; deleted former (3) that read: "(3) (a) A plea bargain agreement is an agreement between a defendant and a prosecutor that in exchange for a particular plea the prosecutor will recommend to the court a particular sentence. A judge may not participate in the making of, and is not bound by, a plea bargain agreement. If a judge does not impose a sentence recommended by a prosecutor pursuant to a plea bargain agreement, the judge is not required to allow the defendant to withdraw a plea of guilty.

(b) Before a judge accepts a plea of guilty, he must advise the defendant:

(i) of all the provisions of subsection (3)(a);

(ii) of the punishment as set forth by statute for the crime charged;

(iii) that prior to entering a plea of guilty, the defendant and his counsel should have carefully reviewed Title 46, chapter 18, and considered the most severe sentence that can be imposed for a particular crime; and

(iv) that the judge may impose any sentence allowed by law"; inserted (3) concerning entering guilty plea while reserving right to appeal; and made minor changes in style.

Coordination Instruction — Amendment Void: Section 3, Ch. 73, L. 1991, provided: "If Senate Bill No. 51 is passed and approved and if it includes a section that amends 46-12-204, then [section 2 of this act], amending 46-12-204, is void." Senate Bill No. 51 was approved May 23, 1991, as Ch. 800, L. 1991, and included an amendment to 46-12-204. Therefore, the amendment to 46-12-204 contained in sec. 2, Ch. 73, L. 1991, is void.

46-12-205. Record of arraignment. The court must prepare and keep a written record of all arraignment proceedings. In district courts a verbatim record of all arraignment proceedings must be made, preserved, and filed with the court.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(f).

46-12-206. Renumbered 46-12-213 by Code Commissioner, 1991.

46-12-207 through 46-12-209 reserved.

46-12-210. Advice to defendant. Before accepting a plea of guilty, the court shall determine that the defendant understands the following:

(1) (a) the nature of the charge for which the plea is offered;

(b) the mandatory minimum penalty provided by law, if any;

(c) the maximum penalty provided by law, including the effect of any penalty enhancement provision or special parole restriction; and

(d) when applicable, the requirement that the court may also order the defendant to make restitution of the costs and assessments provided by law;

(2) if the defendant is not represented by an attorney, the fact that he has the right to be represented by an attorney at every stage of the proceeding against him and that, if necessary, one will be appointed to represent the defendant;

(3) that the defendant has the right:

(a) to plead not guilty or to persist in that plea if it has already been made;

(b) to be tried by a jury and at the trial has the right to the assistance of counsel;

(c) to confront and cross-examine witnesses against the defendant; and

(d) not to be compelled to reveal personally incriminating information;

(4) that if the defendant pleads guilty in fulfillment of a plea agreement, the court is not required to accept the terms of the agreement and that the defendant may not be entitled to withdraw the plea if the agreement is not accepted pursuant to 46-12-211;

(5) that if the defendant's plea of guilty is accepted by the courts, there will not be a further trial of any kind, so that by pleading guilty the defendant waives the right to a trial; and

(6) that if the defendant is not a United States citizen, a guilty plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law.

History: En. 95-1606 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1606(part); amd. Sec. 1, Ch. 606, L. 1985; amd. Sec. 1, Ch. 73, L. 1991; amd. Sec. 133, Ch. 800, L. 1991; Sec. 46-12-202, MCA 1989; redes. 46-12-210 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendments: Chapter 73 inserted (6) requiring that an alien defendant be advised that a guilty plea might result in deportation from or exclusion from admission to the United States or denial of naturalization under federal law; and made minor change in style.

Chapter 800 substituted present language concerning issues court is required to determine that defendant understands for former text that read: "(1) The defendant shall be advised by the court as follows:

(a) of the nature of the crime charged against him;

(b) of the punishment as set forth by statute for the crime charged;

(c) if the defendant intends to enter into a plea bargain agreement:

(i) that under 46-12-204, the court is not bound by such agreements;

(ii) that under 46-12-204, if the court does not impose the sentence recommended by the prosecution pursuant to a plea agreement, the court is not required to allow the defendant to withdraw a plea of guilty;

(iii) that criminal sentencing is governed by Title 46, chapter 18; and

(iv) that the defendant and his counsel should carefully review Title 46, chapter 18, and consider the most severe sentence that can be imposed for a particular crime;

(d) if the defendant appears for arraignment without counsel, of his right to counsel and of his right to assigned counsel if he is unable to employ counsel. If counsel is or has been waived by the defendant, the court shall ascertain if the waiver is or was voluntary before proceeding.

(e) of the time prescribed by statute to enter a plea;

(f) of his right to secure bail to release him from custody.

(2) The court, or the clerk or county attorney under its direction, must:

(a) deliver to the defendant a true copy of the indictment, information, or complaint, including the endorsements thereon and the list of witnesses when required;

(b) read the indictment, information, or complaint to the defendant unless the defendant or his counsel waives such reading; and

(c) ask him whether he pleads guilty or not guilty to the indictment, information, or complaint".

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-12-211. Plea agreement procedure. (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

(a) move for dismissal of other charges;

(b) agree that a specific sentence is the appropriate disposition of the case; or

(c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that the recommendation or request may not be binding upon the court.

(2) If a plea agreement has been reached by the parties, the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good cause in camera, at the time the plea is offered. If the agreement is of the type specified in subsection (1)(a) or (1)(b), the court may accept or reject the agreement, or may defer its decision as to the acceptance or rejection until there has been an opportunity to consider the presentence report. If the agreement is of the type specified in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation or request, the defendant nevertheless has no right to withdraw the plea.

(3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects the plea agreement, the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

History: En. Sec. 134, Ch. 800, L. 1991.

46-12-212. Determining accuracy of plea. (1) The court may not accept a guilty plea without determining that there is a factual basis for the plea in charges of felonies or misdemeanors resulting in incarceration.

(2) A defendant who is unwilling to admit to any element of the offense that would provide a factual basis for a plea of guilty may, with the consent of the court, enter a plea of guilty to the offense if the defendant considers the

plea to be in the defendant's best interest and if a factual basis exists for the plea.

History: En. Sec. 135, Ch. 800, L. 1991.

46-12-213. Harmless error. Any variance from the procedure required by 46-12-211 that does not affect the substantial rights of the defendant must be disregarded.

History: En. 95-1608 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1608; amd. Sec. 136, Ch. 800, L. 1991; Sec. 46-12-206, MCA 1989; redes. 46-12-213 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "Any variance from the procedure required by 46-12-211 that" for "No irregularity in the arraignment which" and after "defendant" substituted "must be disregarded" for "shall affect the validity of any proceeding in the cause if the defendant pleads to the charge or proceeds to trial without objecting to such irregularity".

CHAPTER 13

PRETRIAL MOTIONS

Part 1 — General Provisions

46-13-101. Pretrial motions and notices.
46-13-102. Repealed.
46-13-103. Repealed.
46-13-104. Ruling on motions.
46-13-105. Repealed.
46-13-106. Renumbered 46-13-402 by Code Commissioner, 1991.
46-13-107 reserved.
46-13-108. Notice by prosecutor seeking persistent felony offender status.
46-13-109 reserved.
46-13-110. Omnibus hearing.

Part 2 — Specific Pretrial Motions

46-13-201. Renumbered 46-13-401 by Code Commissioner, 1991.
46-13-202. Motion for continuance.
46-13-203. Change of place of trial for prejudice.
46-13-204. Transfer of trial.
46-13-205. Return to original place of trial.
46-13-206 through 46-13-209 reserved.
46-13-210. Trial of indictments, informations, complaints, or defendants together.
46-13-211. Relief from prejudicial joinder.

Part 3 — Suppression of Evidence

46-13-301. Suppression of confession or admission.
46-13-302. Suppression of evidence.

Part 4 — Motion for Dismissal

46-13-401. Dismissal at instance of court or prosecution.
46-13-402. Effect of order to dismiss.

Chapter Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

Repeal of laws creating criminal offenses — when bar to prosecution, 1-2-205.

Immunity from misdemeanor prosecution — suit for injunction, 30-14-222.

Defendant's immunity from criminal prosecution — Revised Uniform Reciprocal Enforcement of Support Act (1968), 40-5-122.

Part 1

General Provisions

46-13-101. Pretrial motions and notices. (1) Except for good cause shown, any defense, objection, or request that is capable of determination without trial of the general issue must be raised at or before the omnibus hearing unless otherwise provided by Title 46.

(2) Failure of a party to raise defenses or objections or to make requests that must be made prior to trial, at the time set by the court, constitutes a waiver of the defense, objection, or request.

(3) The court, for cause shown, may grant relief from any waiver provided by this section. Lack of jurisdiction or the failure of a charging document to state an offense is a nonwaivable defect and must be noticed by the court at any time during the pendency of a proceeding.

(4) Unless the court provides otherwise, all pretrial motions must be in writing and must be supported by a statement of the relevant facts upon which the motion is being made. The motion must state with particularity the grounds for the motion and the order or relief sought.

History: En. 95-1701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1701; amd. Sec. 168, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, inserted exception clause, after "objection" inserted "or request", and at end, after "raised", substituted "at or before the omnibus hearing unless otherwise provided by Title 46" for "before trial by motion to dismiss or for other appropriate relief"; inserted (2) concerning waiver by failure to timely raise defense or objection; inserted (3) providing for court relief from waiver; inserted first sentence of (4) requiring written motions; and made minor changes in style.

46-13-102. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1702.

46-13-103. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1704 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 22, Ch. 184, L. 1977; R.C.M. 1947, 95-1704.

46-13-104. Ruling on motions. (1) A motion made before trial must be determined before trial unless the court, for good cause, orders it deferred for determination at the trial of the general issue or until after the verdict, but a determination may not be deferred if a party's right to appeal is adversely affected.

(2) Except where mandated by Title 46, the court has discretion to conduct a hearing on the merits of a motion.

(3) The court's final determination of any pretrial motion must state, either in writing or on the record, the court's findings of fact and conclusions of law.

History: En. 95-1705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1705; amd. Sec. 169, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning after "trial", deleted "raising defenses or objections", after "court" inserted "for good cause", and at end inserted "or until after the verdict, but a determination may not be deferred if a party's right to appeal is adversely affected"; inserted (2) concerning hearing on motion; inserted (3) requiring court's statement of findings of fact and conclusions of law; and made minor changes in style.

46-13-105. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(1).

46-13-106. Renumbered 46-13-402 by Code Commissioner, 1991.

46-13-107 reserved.

46-13-108. Notice by prosecutor seeking persistent felony offender status. (1) Except for good cause shown, if the prosecution seeks treatment of the accused as a persistent felony offender, notice of that fact must be given at or before the omnibus hearing pursuant to 46-13-101.

(2) The notice must specify the alleged prior convictions and may not be made known to the jury before the verdict is returned except as allowed by the Montana Rules of Evidence.

(3) If the defendant objects to the allegations contained in the notice, the judge shall conduct a hearing to determine if the allegations in the notice are true.

(4) The hearing must be held before the judge alone. If the judge finds any allegations of the prior convictions are true, the accused must be sentenced as provided by law.

(5) The notice must be filed and sealed until the time of trial or until a plea of guilty is given by the defendant.

History: En. 95-1506 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 184, L. 1977; R.C.M. 1947, 95-1506; amd. Sec. 171, Ch. 800, L. 1991; Sec. 46-18-503, MCA 1989; redes. 46-13-108 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, inserted exception clause, before "seeks" substituted "prosecution" for "state", after "offender" deleted "under 46-18-502", and after "given" substituted "at or before the omnibus hearing pursuant to 46-13-101" for "in writing to the accused or his attorney before the entry of a plea of guilty by the accused or before the case is called for trial upon a plea of not guilty"; in (2) substituted "and may not be" for "The notice and the charges of prior convictions contained therein shall not be made public or in any manner", after "returned" deleted "upon the felony charge", and at end substituted "except as allowed by the Montana Rules of Evidence" for "However, if the defendant testifies in his own behalf, he is subject to impeachment as provided in the Montana Rules of Evidence"; in (3), at beginning, substituted "defendant objects to the allegations contained in" for "accused is convicted upon the felony charge", after "notice" deleted "together with proper proof of timely service, shall be filed with the court before the time fixed for sentencing", and at end substituted "the judge shall conduct a hearing to determine if the allegations in the notice are true" for "the court shall then fix a time for hearing with at least 3 days' notice to the accused"; in (4), in two places, substituted "judge" for "court" and at end substituted "as provided by law" for "under the provisions of 46-18-502"; inserted (5) regarding filing and sealing of notice; and made minor changes in style.

46-13-109 reserved.

46-13-110. Omnibus hearing. (1) Within a reasonable time following the entry of a not guilty plea but not less than 30 days before trial, the court shall hold an omnibus hearing.

(2) The purpose of the hearing is to expedite the procedures leading up to the trial of the defendant.

(3) The presence of the defendant is not required. The prosecutor and the defendant's counsel shall attend the hearing and must be prepared to discuss any pretrial matter appropriate to the case, including but not limited to:

(a) joinder and severance of offenses or defendants, 46-11-404, 46-13-210 and 46-13-211;

(b) double jeopardy, 46-11-410, 46-11-503, and 46-11-504;

(c) the need for exclusion of the public and for sealing records of any pretrial proceedings, 46-11-701;

(d) notification of the existence of a plea agreement, 46-12-211;

(e) disclosure and discovery motions, Title 46, chapter 15, part 3;

(f) notice of reliance on certain defenses, 46-15-323;

(g) notice of seeking enhanced punishment, 46-13-503;

(h) notice of other crimes, wrongs, or acts, 46-13-503;

(i) motion to suppress, 46-13-301 and 46-13-302;

(j) motion to dismiss, 46-13-401 and 46-13-402;

(k) motion for change of place of trial, 46-13-203 through 46-13-205;

(l) reasonableness of bail, Title 46, chapter 9; and

(m) stipulations.

(4) At the conclusion of the hearing, a court-approved memorandum of the matters settled must be signed by the court and counsel and filed with the court.

(5) Any motions made pursuant to subsections (1) through (3) may be ruled on by the court at the time of the hearing, where appropriate, or may be scheduled for briefing and further hearing as the court considers necessary.

History: En. Sec. 170, Ch. 800, L. 1991.

Part 2

Specific Pretrial Motions

46-13-201. Renumbered 46-13-401 by Code Commissioner, 1991.

46-13-202. Motion for continuance. (1) The defendant or the state may move for a continuance. If the motion is made more than 30 days after arraignment or at any time after trial has begun, the court may require that it be supported by affidavit.

(2) The court may upon the motion of either party or upon the court's own motion order a continuance if the interests of justice so require.

(3) All motions for continuance are addressed to the discretion of the trial court and shall be considered in the light of the diligence shown on the part of the movant. This section shall be construed to the end that criminal cases are tried with due diligence consonant with the rights of the defendant and the state to a speedy trial.

History: En. 95-1708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1708.

46-13-203. Change of place of trial for prejudice. (1) The defendant or the prosecution may move for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in the county.

(2) If the court determines that there exists in the county in which the prosecution is pending such prejudice that a fair trial cannot be had, the court shall:

(a) transfer the cause to any other county in which a fair trial may be had;

(b) direct that a jury be selected in any county where a fair trial may be had and then returned to the county where the prosecution is pending to try the case; or

(c) take any other action designed to ensure that a fair trial may be had.

History: En. 95-1710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1710; amd. Sec. 14, Ch. 116, L. 1979; amd. Sec. 1, Ch. 556, L. 1981; amd. Sec. 174, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) deleted last sentence that read: "The motion must be made at least 15 days prior to trial except that, if good cause is shown, it may be made thereafter"; deleted former (2) that read: "(2) The motion must be in writing and supported by an affidavit which must state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion"; in (2)(a), after "other", deleted "court of competent jurisdiction in any"; and made minor changes in style.

Cross-References

Rights of accused and the state — change of venue, Art. II, sec. 24, Mont. Const.

46-13-204. Transfer of trial. If the court determines that a motion to dismiss based upon the grounds of lack of jurisdiction or improper place of trial is well-founded, it may, instead of ordering dismissal, order the cause transferred to a court of competent jurisdiction or to a proper place of trial.

History: En. 95-1707 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 24, Ch. 184, L. 1977; R.C.M. 1947, 95-1707.

46-13-205. Return to original place of trial. When a trial occurs after a change of place of trial and a retrial is required, the cause must be returned to the county in which the charge was originally properly filed for further proceedings.

History: En. Sec. 175, Ch. 800, L. 1991.

46-13-206 through 46-13-209 reserved.

46-13-210. Trial of indictments, informations, complaints, or defendants together. The court may order two or more indictments, informations, complaints, or defendants to be tried together if the interests of justice require and the charges or defendants could have been joined in a single indictment, information, or complaint as provided for in 46-12-213, 46-15-322, and 46-15-323.

History: **En. Sec. 176, Ch. 800, L. 1991.**

46-13-211. Relief from prejudicial joinder. (1) If it appears that a defendant or the prosecution is prejudiced by a joinder of charges or defendants in an indictment, information, or complaint or by a joinder for trial together, the court may order separate trials, grant a severance of defendants, or provide whatever other relief justice requires.

(2) In ruling on a motion by a defendant for severance, the court may order the prosecutor to deliver to the court for inspection, in camera, any statements or confessions made by the defendants that the prosecution intends to introduce at trial.

History: **En. Sec. 177, Ch. 800, L. 1991.**

Part 3

Suppression of Evidence

46-13-301. Suppression of confession or admission. (1) A defendant may move to suppress as evidence any confession or admission given by the defendant on the ground that it was involuntary. The motion must be in writing and state facts showing why the confession or admission was involuntary.

(2) If the allegations of the motion state facts that, if true, show that the confession or admission was involuntary, the court shall conduct a hearing into the merits of the motion. The prosecution must prove by a preponderance of the evidence that the confession or admission was voluntary.

(3) The issue of the admissibility of the confession or admission may not be submitted to the jury. If the confession or admission is determined to be admissible, the circumstances surrounding the making of the confession or admission may be submitted to the jury as bearing upon the credibility or the weight to be given to the confession or admission.

(4) If the motion is granted, the confession or admission is not admissible in evidence against the movant at the trial of the case.

History: **En. 95-1805 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1805; amd. Sec. 1, Ch. 44, L. 1981; amd. Sec. 173, Ch. 800, L. 1991.**

Compiler's Comments

1991 Amendment: Deleted former (2) and (3) that read: "(2) The motion shall be made before the trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting"; and made minor changes in style.

46-13-302. Suppression of evidence. (1) A defendant aggrieved by an unlawful search and seizure may move the court to suppress as evidence anything obtained by the unlawful search and seizure.

(2) If the motion states facts that, if true, would show that the evidence should be suppressed, the court shall hear the merits of the motion at the omnibus hearing or at a later date if the court orders.

(3) If the motion is granted, the evidence is not admissible at trial.

History: En. 95-1806 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1806; amd. Sec. 172, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "obtained", inserted "by the unlawful search and seizure" and deleted second sentence that read: "The motion shall be in writing and state facts showing wherein the search and seizure were unlawful"; deleted former (2) and (3) that read: "(2) The motion shall be made before trial unless for good cause shown the court shall otherwise direct.

(3) The defendant shall give at least 10 days' notice of such motion to the attorney prosecuting or such other time as the court may direct. The defendant shall serve a copy of the notice and motion upon the attorney prosecuting"; in (2), before "motion", deleted "allegations of the", after "show that the" substituted "evidence should be suppressed" for "search and seizure were unlawful", at end inserted "at the omnibus hearing or at a later date if the court orders", and deleted former sentence that read: "The burden of proving that the search and seizure were unlawful shall be on the defendant"; and made minor changes in style.

Cross-References

Unreasonable search and seizure prohibited, Art. II, sec. 11, Mont. Const.

Part 4

Motion for Dismissal

46-13-401. Dismissal at instance of court or prosecution. (1) The court may, either on its own motion or upon the application of the prosecuting attorney and in furtherance of justice, order a complaint, information, or indictment to be dismissed. However, the court may not order a dismissal of a complaint, information, or indictment, or a count contained in a complaint, information, or indictment, charging a felony, unless good cause for dismissal is shown and the reasons for the dismissal are set forth in an order entered upon the minutes.

(2) After the entry of a plea upon a misdemeanor charge, the court, unless good cause to the contrary is shown, shall order the prosecution to be dismissed, with prejudice, if a defendant whose trial has not been postponed upon the defendant's motion is not brought to trial within 6 months.

History: En. 95-1703 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 173, L. 1971; R.C.M. 1947, 95-1703; amd. Sec. 3, Ch. 606, L. 1985; amd. Sec. 178, Ch. 800, L. 1991; Sec. 46-13-201, MCA 1989; redes. 46-13-401 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: At beginning of (2) inserted "After the entry of a plea upon a misdemeanor charge", after "dismissed" inserted "with prejudice", and after "6 months" deleted "after entry of plea upon a complaint, information, or indictment charging a misdemeanor"; and deleted (3) that read: "(3) An order for the dismissal of an action as provided in this chapter is a bar to any other prosecution for the same offense if it is a misdemeanor, but it is not a bar if the offense is a felony"; and made minor changes in style.

Cross-References

Right to a speedy trial, Art. II, sec. 24, Mont. Const.

46-13-402. Effect of order to dismiss. If the court directs the action to be dismissed, the defendant must, if in custody, be discharged and, if admitted to bail, have bail exonerated or money deposited instead of bail refunded to the defendant.

History: En. 95-1706 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 23, Ch. 184, L. 1977; R.C.M. 1947, 95-1706(2); amd. Sec. 179, Ch. 800, L. 1991; Sec. 46-13-106, MCA 1989; redes. 46-13-402 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Deleted second sentence that read: "However, if the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint or if it appears at any time before judgment that a mistake has been made in charging the proper offense, the court may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint, indictment, or information"; and made minor changes in style.

CHAPTER 14

MENTAL COMPETENCY OF ACCUSED

Part 1 — Relevance of Mental Disease or Defect

46-14-101. Mental disease or defect.
46-14-102. Evidence of mental disease or defect admissible to prove state of mind.
46-14-103. Mental disease or defect excluding fitness to proceed.

Part 2 — Procedure When Mental Disease or Defect an Issue

46-14-201. Renumbered 46-14-214 by Code Commissioner, 1991.
46-14-202. Examination of defendant.
46-14-203. Renumbered 46-14-206 by Code Commissioner, 1991.
46-14-204. Prosecution's right to examination.
46-14-205. Access to defendant for examination.
46-14-206. Report of examination.
46-14-207 through 46-14-210 reserved.
46-14-211. Repealed.
46-14-212. Renumbered 46-14-205 by Code Commissioner, 1991.
46-14-213. Psychiatric or psychological testimony upon trial.
46-14-214. Form of verdict and judgment.
46-14-215 and 46-14-216 reserved.
46-14-217. Admissibility of statements made during examination or treatment.
46-14-218 through 46-14-220 reserved.
46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses.
46-14-222. Proceedings if fitness regained.

Part 3 — Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge.
46-14-302. Discharge or release upon motion of superintendent.
46-14-303. Application for discharge or release by committed person.
46-14-304. Recommitment after conditional release.
46-14-305 through 46-14-310 reserved.
46-14-311. Consideration of mental disease or defect in sentencing.
46-14-312. Sentence to be imposed.

46-14-313. Discharge of defendant from supervision.

Part 4 — Privileged Communications

46-14-401. Renumbered 46-14-217 by Code Commissioner, 1991.

Part 1

Relevance of Mental Disease or Defect

46-14-101. Mental disease or defect. As used in 46-14-204, 46-14-312, 46-14-313, and this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial behavior.

History: En. 95-501 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 184, L. 1977; R.C.M. 1947, 95-501; amd. Sec. 1, Ch. 713, L. 1979; amd. Sec. 149, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning inserted "46-14-204, 46-14-312, 46-14-313, and" and at end substituted "behavior" for "conduct"; and made minor change in style.

Cross-References

Voluntary act — material element of every offense, 45-2-202.

Criminal responsibility of person in intoxicated or drugged condition, 45-2-203.

Compulsion of threatened bodily injury, 45-2-212.

46-14-102. Evidence of mental disease or defect admissible to prove state of mind. Evidence that the defendant suffered from a mental disease or defect is admissible to prove that the defendant did or did not have a state of mind that is an element of the offense.

History: En. 95-502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-502; amd. Sec. 150, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: After "admissible" deleted "whenever it is relevant"; and made minor change in style.

46-14-103. Mental disease or defect excluding fitness to proceed. A person who, as a result of mental disease or defect, is unable to understand the proceedings against the person or to assist in the person's own defense may not be tried, convicted, or sentenced for the commission of an offense so long as the incapacity endures.

History: En. 95-504 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-504; amd. Sec. 151, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Part 2

Procedure When Mental Disease or Defect an Issue

46-14-201. Renumbered 46-14-214 by Code Commissioner, 1991.

46-14-202. Examination of defendant. (1) If the defendant or the defendant's counsel files a written motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the district court, prosecution, or defense counsel, the district court shall appoint at least one qualified psychiatrist or licensed clinical psychologist or shall request the superintendent of the Montana state hospital to designate at least one qualified psychiatrist or licensed clinical psychologist, which designation may be or include the superintendent, to examine and report upon the defendant's mental condition.

(2) The court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding 60 days or a longer period as the court determines to be necessary for the purpose and may direct that a qualified psychiatrist or licensed clinical psychologist retained by the defendant be permitted to witness and participate in the examination.

(3) In the examination, any method may be employed that is accepted by the medical or psychological profession for the examination of those alleged to be suffering from mental disease or defect.

(4) If the defendant is indigent or the examination occurs at the request of the prosecution, the cost of the examination must be paid by the county or the state, or both, according to procedures established under 3-5-902(1).

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(1), (2); amd. Sec. 3, Ch. 713, L. 1979; amd. Sec. 1, Ch. 616, L. 1981; amd. Sec. 2, Ch. 361, L. 1983; amd. Sec. 13, Ch. 680, L. 1985; amd. Sec. 1, Ch. 127, L. 1987; amd. Sec. 152, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (1) substituted "motion requesting an examination" for "notice of his intent to rely on a mental disease or defect under 46-14-201" and after "proceed" inserted "is raised by the district court, prosecution, or defense counsel"; in (3), after "medical", inserted "or psychological"; at beginning of (4) inserted "If the defendant is indigent or the examination occurs at the request of the prosecution"; and made minor changes in style.

Cross-References

Consideration of mental disease or defect in sentencing, 46-14-311.

46-14-203. Renumbered 46-14-206 by Code Commissioner, 1991.

46-14-204. Prosecution's right to examination. (1) When the defense discloses the report of the examination to the prosecution or files a notice of the intention to rely on a defense of mental disease or defect, the prosecution is entitled to have the defendant examined by a qualified psychiatrist or licensed clinical psychologist.

(2) The report of the examination must be disclosed to the defense within 10 days of its receipt by the prosecution.

History: En. Sec. 153, Ch. 800, L. 1991.

46-14-205. Access to defendant for examination. If either the defendant or the prosecution wishes the defendant to be examined by a qualified psychiatrist or licensed clinical psychologist selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether the defendant had, at the time the offense was committed, a particular state of mind that is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(2); amd. Sec. 5, Ch. 713, L. 1979; amd. Sec. 2, Ch. 127, L. 1987; amd. Sec. 154, Ch. 800, L. 1991; Sec. 46-14-212, MCA 1989; redes. 46-14-205 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Near beginning substituted "prosecution" for "state" and after "psychologist" deleted "or other expert"; and made minor changes in style.

46-14-206. Report of examination. (1) A report of the examination may include the following:

(a) a description of the nature of the examination;

(b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the defendant is seriously mentally ill as defined in 53-21-102;

(c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

(d) when directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind that is an element of the offense charged; and

(e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirement of the law.

(2) If the examination cannot be conducted by reason of the unwillingness of the defendant to participate in the examination, the report must state that fact and must include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

History: En. 95-505 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 88, Ch. 120, L. 1974; R.C.M. 1947, 95-505(3) thru (5); amd. Sec. 4, Ch. 713, L. 1979; amd. Sec. 155, Ch. 800, L. 1991; Sec. 46-14-203, MCA 1989; redes. 46-14-206 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1) substituted "may" for "shall"; at end of (1)(b) inserted "including an opinion as to whether the defendant is seriously mentally ill as defined in 53-21-102"; inserted (1)(e) concerning opinion of defendant's capacity to appreciate criminality of behavior or to conform behavior; deleted (3) that read: "(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant"; and made minor changes in style.

46-14-207 through 46-14-210 reserved.

46-14-211. Repealed. Sec. 15, Ch. 713, L. 1979.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(1).

46-14-212. Renumbered 46-14-205 by Code Commissioner, 1991.

46-14-213. Psychiatric or psychological testimony upon trial. (1) Upon trial, any psychiatrist or licensed clinical psychologist who reported under 46-14-202 or 46-14-206 may be called as a witness by the prosecutor or by the defense. Both the prosecution and the defense may summon any other qualified psychiatrist or licensed clinical psychologist to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or licensed clinical psychologist who has examined the defendant testifies concerning the defendant's mental condition, the psychiatrist or licensed clinical psychologist may make a statement as to the nature of the examination and the medical or psychological diagnosis of the mental condition of the defendant. The expert may make any explanation reasonably serving to clarify the expert's examination and diagnosis, and the expert may be cross-examined as to any matter bearing on the expert's competency or credibility or the validity of the expert's examination or medical or psychological diagnosis. A psychiatrist or licensed clinical psychologist may not offer an opinion to the jury on the ultimate issue of whether the defendant did or did not have a particular state of mind that is an element of the offense charged.

History: En. 95-507 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 90, Ch. 120, L. 1974; amd. Sec. 4, Ch. 184, L. 1977; R.C.M. 1947, 95-507(3), (4); amd. Sec. 6, Ch. 713, L. 1979; amd. Sec. 3, Ch. 361, L. 1983; amd. Sec. 3, Ch. 127, L. 1987; amd. Sec. 156, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) deleted former second sentence that read: "If the issue is being tried before a jury, the jury may not be informed that the psychiatrist or licensed clinical psychologist was designated by the court or by the superintendent of the Montana state hospital" and in second sentence and near beginning of (2), after "psychologist", deleted "or other expert"; in (2) near end of first sentence before "diagnosis", inserted "and the medical or psychological" and at end deleted "at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to have a particular state of mind which is an element of the offense charged", in second sentence, near beginning before "diagnosis", inserted "examination and", after "diagnosis" deleted "and opinion", near end, before "diagnosis", inserted "examination or medical or psychological", and after "diagnosis" deleted "or opinion", and inserted last sentence prohibiting opinion on ultimate issue of state of mind that is an element of offense charged; and made minor changes in style.

46-14-214. Form of verdict and judgment. When the defendant is found not guilty of the charged offense or offenses or any lesser included offense for the reason that due to a mental disease or defect the defendant did not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment must state that reason.

History: En. 95-503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-503; amd. Sec. 2, Ch. 713, L. 1979; amd. Sec. 1, Ch. 593, L. 1981; amd. Sec. 157, Ch. 800, L. 1991; Sec. 46-14-201, MCA 1989; redes. 46-14-214 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Deleted (1) that read: "(1) Evidence of mental disease or defect is not admissible in a trial on the merits unless the defendant, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, files a written notice of his purpose to rely on a mental disease or defect to prove that he did not have a particular state of mind which is an essential element of the offense charged. Otherwise, except on good cause shown, he shall not introduce in his case in chief expert testimony in support of that defense"; and made minor changes in style.

Cross-References

Notice of certain defenses, 46-15-323.

46-14-215 and 46-14-216 reserved.

46-14-217. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric or psychological examination or treatment provided for in this section by a person subjected to examination or treatment is not admissible in evidence against the person at trial on any issue other than that of the person's mental condition. It is admissible on the issue of the person's mental condition, whether or not it would otherwise be considered a privileged communication, only when and after the defendant presents evidence that due to a mental disease or defect the defendant did not have a particular state of mind that is an element of the offense charged.

History: En. 95-509 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 5, Ch. 184, L. 1977; R.C.M. 1947, 95-509; amd. Sec. 13, Ch. 713, L. 1979; amd. Sec. 158, Ch. 800, L. 1991; Sec. 46-14-401, MCA 1989; redes. 46-14-217 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In first sentence, near beginning after "psychiatric", inserted "or psychological" and near end, after "person", substituted "at trial" for "in any criminal proceeding, except a sentencing hearing conducted under 46-14-311", in second sentence, after "communication", substituted "only when and after the defendant presents evidence that due to a mental disease or defect the defendant did not have a particular state of mind that is an element of the offense" for "unless it constitutes an admission of guilt of the crime" and deleted former last sentence that read: "In a hearing held under 46-14-311, the court may hear and consider any such statement even if it constitutes an admission of guilt"; and made minor changes in style.

Cross-References

Doctor-patient privilege, 26-1-805.
Psychologist-client privilege, 26-1-807.

46-14-218 through 46-14-220 reserved.

46-14-221. Determination of fitness to proceed — effect of finding of unfitness — expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, the defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor counsel for the defendant contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of corrections and human services to be placed in an appropriate institution of the department of corrections and human

services for so long as the unfitness endures. The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4), and the prosecutor shall petition the court in the manner provided in chapter 20 or 21 of Title 53, whichever is appropriate, to determine the disposition of the defendant pursuant to those provisions.

(3) If the court determines that the defendant lacks fitness to proceed because the defendant is developmentally disabled as provided in 53-20-102(4), the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in chapter 20 of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of corrections and human services to be placed in an appropriate institution of the department of corrections and human services, of keeping the defendant there, and of bringing the defendant back are chargeable to the state and payable according to procedures established under 3-5-902(1).

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 7, Ch. 713, L. 1979; amd. Sec. 2, Ch. 616, L. 1981; amd. Sec. 1, Ch. 352, L. 1983; amd. Sec. 14, Ch. 680, L. 1985; amd. Sec. 4, Ch. 127, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 159, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 800 throughout section substituted "prosecutor" for "county attorney"; in (1), near beginning of first sentence after "raised by", inserted "the court" and in fifth sentence substituted "subpoena" for "summon"; and made minor changes in style.

46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of corrections and human services, the prosecution, or the defendant or the defendant's legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding must be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental illness, order the defendant committed to an appropriate institution of the department of corrections and human services.

History: En. 95-506 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 513, L. 1973; amd. Sec. 89, Ch. 120, L. 1974; amd. Sec. 6, Ch. 568, L. 1977; R.C.M. 1947, 95-506(part); amd. Sec. 8, Ch. 713, L. 1979; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 160, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 800 near middle of first sentence substituted "prosecution" for "county attorney"; and made minor changes in style.

Part 3

Disposition of Defendant

46-14-301. Commitment upon finding of not guilty by reason of lack of mental state — hearing to determine release or discharge. (1) When a defendant is found not guilty for the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is an essential element of the offense charged, the court shall order a predisposition investigation in accordance with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence presented at the trial must be considered by the court in making its determination.

(2) The court, upon finding that the defendant may not be discharged or released without danger to others, shall order the defendant committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.

(3) A person committed to the custody of the superintendent shall have a hearing within 180 days of confinement to determine the person's present mental condition and whether the person may be discharged or released without danger to others. The hearing must be conducted by the court that ordered the commitment unless that court transfers jurisdiction to the third judicial district. The court shall cause notice of the hearing to be served upon the person, the person's counsel, and the prosecutor. The hearing is a civil proceeding, and the burden is upon the defendant to prove by a preponderance of the evidence that the defendant may be safely released.

(4) According to the determination of the court upon the hearing, the defendant must be discharged or released on conditions the court determines to be necessary or must be committed to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution for custody, care, and treatment.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(1); amd. Sec. 9, Ch. 713, L. 1979; amd. Sec. 2, Ch. 593, L. 1981; amd. Sec. 4, Ch. 361, L. 1983; amd. Sec. 161, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

46-14-302. Discharge or release upon motion of superintendent. (1) If the superintendent of the Montana state hospital believes that a person committed to the superintendent's custody under 46-14-301 may be discharged or released on condition without danger to the person or others, the superintendent shall make application for the discharge or release of the person in a report to the court by which the person was committed and shall send a copy of the application and report to the prosecutor of the county from which the defendant was committed.

(2) The court shall then appoint at least two persons who are either qualified psychiatrists or licensed clinical psychologists to examine the person and to report their opinion as to the person's mental condition within 60 days or a longer period that the court determines to be necessary for the purpose. To facilitate the examinations and the proceedings on the examinations, the court may have the person confined in any institution located near the place where the court sits that may be designated by the superintendent of the Montana state hospital as suitable for the temporary detention of irresponsible persons.

(3) If the court is satisfied by the report filed under subsection (1) and the testimony of the reporting psychiatrist or licensed clinical psychologist that the committed person may be discharged or released on condition without danger to the person or others, the court shall order the person's discharge or release on conditions that the court determines to be necessary.

(4) If the court is not satisfied, it shall promptly order a hearing to determine whether the person may safely be discharged or released. A hearing is considered a civil proceeding, and the burden is upon the committed person to prove by a preponderance of the evidence that the person may safely be discharged or released. According to the determination of the court upon the hearing, the committed person must then be discharged or released on conditions that the court determines to be necessary or must be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures provided in this section and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(2), (3); amd. Sec. 15, Ch. 116, L. 1979; amd. Sec. 5, Ch. 361, L. 1983; amd. Sec. 5, Ch. 127, L. 1987; amd. Sec. 162, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Near end of (1) substituted "prosecutor" for "county attorney"; in (3), after "psychologist", deleted "which the court considers necessary"; and made minor changes in style.

46-14-303. Application for discharge or release by committed person. A committed person may make application for discharge or release to the court by which the person was committed, and the procedure to be followed upon the application is the same as that prescribed in 46-14-302 in the case of an application by the superintendent of the Montana state hospital. However, an application by a committed person need not be considered until the person has been confined for a period of not less than 6 months from the date of the order of commitment, and if the determination of the court is adverse to the application, the person may not be permitted to file a further application until 1 year has elapsed from the date of any preceding hearing on an application for the person's release or discharge.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(5); amd. Sec. 6, Ch. 361, L. 1983; amd. Sec. 163, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence, after "prescribed", substituted "in 46-14-302" for "above"; and made minor changes in style.

46-14-304. Recommitment after conditional release. If within 5 years after the conditional release of a committed person the court determines after hearing evidence that the conditions of release have not been fulfilled and that for the safety of the person or for the safety of others the person's conditional release should be revoked, the court shall immediately order the person to be recommitted to the custody of the superintendent of the Montana state hospital, subject to discharge or release only in accordance with the procedures provided in 46-14-302 and 46-14-303.

History: En. 95-508 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 210, L. 1973; amd. Sec. 91, Ch. 120, L. 1974; R.C.M. 1947, 95-508(4); amd. Sec. 16, Ch. 116, L. 1979; amd. Sec. 7, Ch. 361, L. 1983; amd. Sec. 164, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: After "recommitted to the" inserted "custody of the"; and made minor changes in style.

46-14-305 through 46-14-310 reserved.

46-14-311. Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and claims that at the time of the commission of the offense of which convicted the defendant was suffering from a mental disease or defect that rendered the defendant unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of law, the sentencing court shall consider any relevant evidence presented at the trial and shall require additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report of the examination as provided in 46-14-202 and 46-14-206.

History: En. Sec. 10, Ch. 713, L. 1979; amd. Sec. 165, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In two places substituted "the defendant's behavior" for "his conduct"; and made minor changes in style.

Cross-References

Admissibility of statements made during examination or treatment, 46-14-217.

46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not

apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that:

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law; or

(c) the defendant suffers from a mental disease or defect that makes him a danger to himself or others, but either there is no treatment available for his mental disease or defect or he refuses to cooperate with treatment.

(4) The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

History: En. Sec. 11, Ch. 713, L. 1979; amd. Sec. 1, Ch. 267, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 166, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 800 made minor changes in style.

46-14-313. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under 46-14-312, the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

History: En. Sec. 12, Ch. 713, L. 1979; amd. Sec. 167, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Deleted reference to subsection (2) of 46-14-312.

Part 4

Privileged Communications

46-14-401. Renumbered 46-14-217 by Code Commissioner, 1991.

CHAPTER 15

PRODUCTION OF EVIDENCE

Part 1 — Subpoenas and Witnesses

46-15-101. Subpoenas.
46-15-102. Renumbered 46-15-107 by Code Commissioner, 1991.
46-15-103. Renumbered 46-15-115 by Code Commissioner, 1991.
46-15-104. Renumbered 46-15-116 by Code Commissioner, 1991.
46-15-105. Persons imprisoned in state prison or in another county.
46-15-106. Subpoenas for production of evidence.
46-15-107. Service of subpoenas.
46-15-108 through 46-15-110 reserved.
46-15-111. Repealed.
46-15-112. Subpoena of witness in this state to testify in another state.
46-15-113. Subpoena of witness in another state to testify in this state.
46-15-114. Renumbered 46-15-120 by Code Commissioner, 1991.
46-15-115. Subpoena for witness when defendant unable to pay.
46-15-116. Fees, costs, and expenses.
46-15-117 through 46-15-119 reserved.
46-15-120. Exemption from arrest and service of process.

Part 2 — Depositions

46-15-201. When depositions may be taken.
46-15-202. Procedure for taking depositions.
46-15-203. Repealed.
46-15-204. Use of depositions at trial.

Part 3 — Discovery—Immunity for Witnesses

46-15-301. Repealed.
46-15-302. Repealed.
46-15-303. Repealed.
46-15-304 through 46-15-310 reserved.
46-15-311. Renumbered 46-15-331 by Code Commissioner, 1985.
46-15-312. Renumbered 46-15-332 by Code Commissioner, 1985.
46-15-313 through 46-15-320 reserved.
46-15-321. Repealed.
46-15-322. Disclosure by prosecution.
46-15-323. Disclosure by defendant.
46-15-324. Materials not subject to disclosure.
46-15-325. Failure to call a witness or raise a defense.
46-15-326. Use of materials.
46-15-327. Continuing duty to disclose.
46-15-328. Excision and protective orders.
46-15-329. Sanctions.
46-15-330. Investigation not to be impeded.
46-15-331. Compelling testimony or production of evidence — immunity.
46-15-332. Privileged matters.

Part 4 — Evidence in Cases Involving Sexual Offenses

46-15-401. Repealed.
46-15-402. Procedure at videotaping.

46-15-403. Court order to protect privacy of victim.
46-15-404 through 46-15-410 reserved.
46-15-411. Payment for medical evidence.

Part 1

Subpoenas and Witnesses

Part Cross-References

Rights of accused — compulsory process, Art. II, sec. 24, Mont. Const.

Criminal process on United States land, Title 2, ch. 1, part 2; 2-1-307.

District Court Clerk's duties — record of witnesses, 3-5-510.

District Court Clerk's duties — witness certificate, 3-5-511.

Sections granting immunity to witnesses, 5-5-105, 7-3-4365, 13-36-208, 25-14-106, 26-2-302, 33-1-316, 40-6-111, 69-14-113.

Witness fees, courts of record, 26-2-501.

Investigative subpoenas, Title 46, ch. 4, part 3.

46-15-101. Subpoenas. (1) After the filing of charges and upon the request of the prosecuting attorney, the defendant, or the defendant's attorney, the clerk of the court shall issue subpoenas with the name of the person to whom each subpoena is directed, commanding the person to appear and to give testimony.

(2) A subpoena must state the name of the court and the title, if any, of the proceeding and must command each person to whom it is directed to attend and give testimony at the time and place specified in the subpoena.

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(a); amd. Sec. 180, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, inserted "After the filing of charges and", after "attorney" deleted "the court", and at end inserted "with the name of the person to whom each subpoena is directed, commanding the person to appear and to give testimony"; in (2), near end after "testimony", deleted "and produce objects and documents"; inserted (3) concerning quashing or modifying subpoena; and made minor changes in style.

Cross-References

Right to process to compel attendance of witnesses, Art. II, sec. 24, Mont. Const.

Subpoena defined, 26-2-101.

Deposition of prospective witness, Title 46, ch. 15, part 2.

46-15-102. Renumbered 46-15-107 by Code Commissioner, 1991.

46-15-103. Renumbered 46-15-115 by Code Commissioner, 1991.

46-15-104. Renumbered 46-15-116 by Code Commissioner, 1991.

46-15-105. Persons imprisoned in state prison or in another county. When it is necessary to have a person imprisoned in the state prison brought before any court or a person imprisoned in a county jail brought before a court sitting in another county, an order for that purpose may be made by the court and executed by the sheriff of the county where it is made.

History: En. Sec. 2900, Pen. C. 1895; re-en. Sec. 9714, Rev. C. 1907; re-en. Sec. 12432, R.C.M. 1921; Cal. Pen. C. Sec. 1567; re-en. Sec. 12432, R.C.M. 1935; Sec. 94-701-1, R.C.M. 1947; redes. 95-1812 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1812.

Cross-References

Securing testimony of witness who is a prisoner, Title 26, ch. 2, part 2.

46-15-106. Subpoenas for production of evidence. (1) A subpoena may command the person to whom it is directed to produce the books, papers, documents, or other objects designated in the subpoena.

(2) The court may direct that the books, papers, documents, or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time when they are to be offered into evidence and may upon their production permit the books, papers, documents, or objects, or portions thereof, to be inspected by the parties and their attorneys.

(3) The court, upon a timely motion, may quash or modify a subpoena if compliance would be unreasonable or oppressive.

History: En. Sec. 181, Ch. 800, L. 1991.

46-15-107. Service of subpoenas. (1) A subpoena may be served by a peace officer or by any other person who is not a party and who is not less than 18 years of age. A peace officer shall serve any subpoena delivered to the peace officer for service in the peace officer's county either on the part of the prosecution or of the defendant.

(2) Service of a subpoena must be made by delivering a copy of the subpoena to the person named and, if ordered by the court, by tendering to those residing outside the county of trial the fee for 1 day's attendance and the mileage allowed by law. The person making the service shall without delay make a written return of the service subscribed by the person, stating the time and place of service.

(3) A subpoena requiring attendance of a witness at a hearing or trial may be served anywhere within the state of Montana.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(e), (f); amd. Sec. 182, Ch. 800, L. 1991; Sec. 46-15-102, MCA 1989; redes. 46-15-107 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Near end of (1) substituted "prosecution" for "state"; and made minor changes in style.

Cross-References

Witness fees, Title 26, ch. 2, part 5.

46-15-108 through 46-15-110 reserved.

46-15-111. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1808 by Sec. 8, Ch. 513, L. 1973; R.C.M. 1947, 95-1808.

46-15-112. Subpoena of witness in this state to testify in another state. (1) If a judge of a court of record in any state, which by its laws has made provision for commanding persons within that state to attend and testify in this state, certifies under the seal of the court that there is a criminal prosecution pending in the court or that a grand jury investigation is commenced or is about to commence, that a person being within this state is a material witness in the prosecution or a grand jury investigation, and that the person's presence will be required for a specified number of days, upon presentation of the certificate to any judge of a court of record in the county in which the person is located, the judge shall fix a time and place for a hearing and shall make an order directing the witness to appear at a time and place certain for the hearing.

(2) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state, and that the laws of the state in which the prosecution is pending or a grand jury investigation is commenced or is about to commence will give the witness protection from arrest and the service of civil and criminal process, the judge shall issue a subpoena with a copy of the certificate attached directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation is commenced or is about to commence at a time and place specified in the subpoena. In the hearing, the certificate is prima facie evidence of all the facts stated in the certificate.

(3) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure the witness's attendance in the requesting state, the judge may, in lieu of notification of the hearing, direct that the witness be brought before the judge for the hearing. At the hearing, the judge may, in lieu of issuing a subpoena, order that the witness be taken into custody and delivered to an officer of the requesting state.

History: **En. Sec. 2, Ch. 188, L. 1937; Sec. 94-9002, R.C.M. 1947; redes. 95-1809 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1809; amd. Sec. 183, Ch. 800, L. 1991.**

Compiler's Comments

1991 Amendment: In (2), in two places in first sentence, substituted "subpoena" for "summons"; in (3), after "judge", deleted "being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability" and after "subpoena" deleted "or summons"; deleted (4) that read: "(4) If the witness who is summoned as provided in this section, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state"; and made minor changes in style.

Cross-References

Punishment for disobeying summons, 46-6-212(1).

46-15-113. Subpoena of witness in another state to testify in this state. (1) Whenever a person in any state that by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation that is commenced or is about to commence, a judge of the court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate must be presented to a judge of a court of record in the county in which the witness is found.

(2) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure the witness's attendance in this state, it is prima facie proof of the desirability of the custody and delivery, and the judge may direct that the witness be brought before the judge immediately. If the judge is satisfied as to the desirability of custody and delivery, the judge may order that the witness be immediately taken into custody and delivered to an officer of this state. The order is sufficient authority for the officer to take the witness into custody and hold the witness unless and until the witness is released by bail, recognizance, or order of the judge issuing the certificate.

(3) A witness who has appeared in accordance with the provisions of the subpoena may not be required to remain within this state for a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court.

(4) If the witness fails without good cause to attend and testify as directed, the witness must be punished in the manner provided for the punishment of any witness who disobeys an order issued from a court of record in this state in accordance with Title 3, chapter 1, part 5, or in accordance with 45-7-309.

History: En. Sec. 3, Ch. 188, L. 1937; amd. Sec. 1, Ch. 117, L. 1949; Sec. 94-9003, R.C.M. 1947; redes. 95-1810 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 27, Ch. 184, L. 1977; R.C.M. 1947, 95-1810; amd. Sec. 184, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Deleted former (3) that read: "(3) Whenever a witness is summoned to attend and testify in this state, he shall be tendered the sum of 10 cents a mile for each mile and $5 for each day that he is required to travel and attend as a witness. If the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount in excess of the amount specified in the preceding sentence, the witness may be tendered the amount required by that state"; in (3) substituted "subpoena" for "summons"; in (4), after "directed", deleted "in the summons", after "disobeys" substituted "an order" for "a summons", and at end inserted "in accordance with Title 3, chapter 1, part 5, or in accordance with 45-7-309"; and made minor changes in style.

Cross-References

Punishment for failure of defendant to appear upon summons, 46-6-212(1).

46-15-114. Renumbered 46-15-120 by Code Commissioner, 1991.

46-15-115. Subpoena for witness when defendant unable to pay. (1) The court shall order at any time that a subpoena be issued for service on a named witness upon the ex parte application of the defendant and upon a satisfactory showing that the defendant is financially unable to pay the costs incurred for the witness and that the presence of the witness is necessary to an adequate defense.

(2) If a defendant is indigent, a court order must be obtained if more than six witnesses are to be subpoenaed.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(b); amd. Sec. 185, Ch. 800, L. 1991; Sec. 46-15-103, MCA 1989; redes. 46-15-115 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: Inserted (1) concerning subpoena of witness for defendant unable to pay; in (2) deleted last two sentences that read: "If a witness is to be paid more than the regular fee or there are more than six witnesses to be paid, an order of the court or judge is needed. Such order may be made upon proper showing

by affidavit or otherwise"; and made minor changes in style.

46-15-116. Fees, costs, and expenses. (1) When a person attends before a judge, grand jury, or court as a witness in a criminal case upon a subpoena, the witness shall receive the witness fee prescribed by Title 26, chapter 2, part 5. The court, on motion by either party, may allow additional fees for expert witnesses.

(2) The court may determine the reasonable and necessary expenses of subpoenaed witnesses and order the clerk of the court to pay the expenses from the county treasury.

(3) When a person is subpoenaed in this state to testify in another state or is subpoenaed from another state to testify in this state, the person must be paid for lodging, mileage or travel, and per diem, the sum equal to that allowed by Title 2, chapter 18, part 5, for each day that the person is required to travel and attend as a witness. If the state where the witness is found has by statutory enactment required that the subpoenaed witness be paid an amount in excess of the amount specified in this section, the witness may be paid the amount required by that state.

(4) According to procedures required by the supreme court administrator, under 3-5-902, the clerk of the district court shall submit to the administrator a detailed statement containing a list of witnesses and the amount of expenses paid to each witness by the county. Upon receipt and verification of the statement, the administrator shall promptly reimburse the designated county for all or a portion of the witness expenses. The county shall deposit the amount reimbursed in its general fund.

History: En. 95-1801 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1801(c); amd. Sec. 15, Ch. 680, L. 1985; amd. Sec. 9, Ch. 1, Sp. L. 1985; amd. Sec. 8, Ch. 704, L. 1991; amd. Sec. 186, Ch. 800, L. 1991; Sec. 46-15-104, MCA 1989; redes. 46-15-116 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendments: Chapter 704 in (4), near beginning, substituted "required by the supreme court administrator" for "established by the department of commerce" and in first and second sentences substituted "administrator" for "department". Amendment effective July 1, 1991.

Chapter 800 in (1), near beginning, substituted "judge" for "magistrate", after "subpoena" deleted "or in pursuance of an undertaking, the judge, at his discretion, by a written order may direct the clerk of the court to draw his warrant upon the county treasurer in favor of such witness for a reasonable sum, to be specified in the order, for the necessary expenses of", after "witness" inserted "shall receive the witness fee prescribed by Title 26, chapter 2, part 5", and inserted last sentence concerning additional fees for experts; inserted (2) concerning payment of witness expenses; inserted (3) concerning out-of-state witness payments; in (4), near beginning, deleted reference to subsection (1) of 3-5-902 and at end, after "fund", deleted "unless the county has a district court fund. If the county has a district court fund, the amount reimbursed must be deposited in such fund"; and made minor changes in style.

Cross-References

Mileage of witnesses, 2-18-503.

Witness fees — courts of record, 26-2-501.

46-15-117 through 46-15-119 reserved.

46-15-120. Exemption from arrest and service of process. (1) If a person comes into this state in obedience to a subpoena directing the person to attend and testify in this state, the person may not, while in this state pursuant to the subpoena or order, be subject to arrest or the service of process, civil or criminal, in connection with matters that arose before the person's entrance into this state under the subpoena.

(2) If a person passes through this state while going to another state in obedience to a subpoena or order to attend and testify in that state, the person may not, while passing through this state, be subject to arrest or the service of process, civil or criminal, in connection with matters that arose before the person's entrance into this state under the subpoena.

History: **En. Sec. 4, Ch. 188, L. 1937; Sec. 94-9004, R.C.M. 1947; redes. 95-1811 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-1811; amd. Sec. 187, Ch. 800, L. 1991; Sec. 46-15-114, MCA 1989; redes. 46-15-120 by Code Commissioner, 1991.**

Compiler's Comments

1991 Amendment: Throughout section substituted "subpoena" for "summons"; in (2), after "in that state", deleted "or while returning therefrom" and substituted "subpoena" for "summons or order"; and made minor changes in style.

Cross-References

Witness protected from arrest when attending, going, and returning, 26-2-402.

Persons exempt from arrest, 46-6-102.

Part 2

Depositions

46-15-201. When depositions may be taken. (1) In district or municipal court cases, a deposition may be taken if it appears that a prospective witness:

(a) is likely to be either unable to attend or otherwise prevented from attending a trial or hearing;

(b) is likely to be absent from the state at the time of the trial or hearing; or

(c) is unwilling to provide relevant information to a requesting party and the witness's testimony is material and necessary in order to prevent a failure of justice. The district court shall, upon motion of any party and proper notice, order that the testimony of the witness be taken by deposition and that any designated books, papers, documents, or tangible objects, not privileged, be introduced at the time the deposition is taken.

(2) The witness whose deposition is to be taken may be required by subpoena to attend at any place designated by the district court, taking into account the convenience of the parties and of the witness.

(3) If the defendant is charged with a felony and it appears upon the affidavit of counsel for a party that good cause exists to believe that a witness will not respond to a subpoena and the administration of justice requires, any district judge may issue an arrest warrant commanding the arrest of a material witness. The arrest warrant must further order a deposition to be taken without unnecessary delay. A person may not be imprisoned for the purpose of securing testimony in any criminal proceeding longer than is necessary to take the person's deposition.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(a); amd. Sec. 146, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (1) inserted "In district or municipal court cases, a deposition may be taken"; in (1) (b) substituted "is likely to be absent from the state at the time of the trial or hearing" for "is or may become a nonresident of the state"; in (1)(c), at beginning of second sentence before "court", inserted "district" and after "court" deleted "at any time after the preliminary hearing or the filing of the indictment or the information"; substituted (2) concerning deposition of witness for "If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court must direct that his deposition be taken at the expense of the state. After the deposition has been subscribed, the court shall discharge the witness"; inserted (3) concerning arrest of material witness for defendant charged with felony; and made minor changes in style.

Cross-References

Detention for purpose of securing testimony, Art. II, sec. 23, Mont. Const.

Recognizance by or deposition of witness, 46-11-601.

46-15-202. Procedure for taking depositions. (1) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition. The notice must state the name and address of each person to be examined. On motion of the party upon whom the notice is served, the district court for cause shown may extend or shorten the time or change the place for taking the deposition.

(2) A deposition must be taken in the manner provided in civil actions. The district court, upon request, may direct that a deposition be taken on written interrogatories in the manner provided in civil actions. However, a deposition may not be taken of a party defendant without his consent, and the scope and manner of examination and cross-examination must be restricted as would be allowed in the trial itself.

(3) The deposition must be filed with the district court making the order and held until the trial. Either party shall make available to the other party, or the other party's counsel, for examination and use at the taking of the deposition any relevant, nonprivileged statement of the witness being deposed that is in the possession of either party.

(4) Objections to deposition testimony or evidence or parts of the testimony or evidence may be reserved for subsequent determination by the district court.

(5) Unless a defendant in custody has waived, in writing, the right to be present at the taking of a deposition, the officer having custody of the defendant must be notified of the time and place set for the deposition. The officer having custody shall produce the defendant and keep the defendant in the presence of a witness during the deposition.

(6) A defendant not in custody who fails to appear, without good cause, at the taking of a deposition after being notified of the time and place set for the deposition will be considered to have waived the right to be present as provided in 46-16-122. The waiver includes a waiver of any objection to the taking and use of the deposition based upon that right.

(7) Whenever a deposition is taken at the instance of the prosecution or whenever a deposition is taken at the instance of a defendant who is unable to bear the expense of taking a deposition, the district court shall direct that the expense of travel and subsistence of the defendant and the defendant's

counsel for attendance at the examination and the cost of the transcript of the deposition be paid by the state.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(b) thru (d); amd. Sec. 147, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) and (2), before "court", inserted "district"; in (2), in second sentence after "request", deleted "of a defendant" and inserted last sentence concerning consent of party defendant to deposition; at beginning of (3) substituted "deposition must be filed with the district court making the order" for "court shall transmit the deposition to the clerk of the court making the order, there to be filed" and inserted second sentence concerning availability of nonprivileged statement of witness being deposed; inserted (4) concerning objections; inserted (5) concerning right to be present at deposition; inserted (6) concerning failure to appear at deposition; inserted (7) concerning payment for deposition; and made minor changes in style.

Cross-References

How depositions taken, Rules 26, 28 through 32, M.R.Civ.P. (see Title 25, ch. 20).

46-15-203. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(g).

46-15-204. Use of depositions at trial. Any deposition may be used by any party for any purpose allowed by the Montana Rules of Evidence.

History: En. 95-1802 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1802(e), (f); amd. Sec. 148, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Substituted present language concerning use of deposition for any purpose allowed by Montana Rules of Evidence for former text that read: "(1) At the trial or upon any hearing, a part or all of a deposition, so far as otherwise admissible under the rules of evidence, may be used if it appears that:

(a) the witness is dead;

(b) the witness is out of the state of Montana unless it appears that the absence of the witness was procured by the party offering the deposition;

(c) the witness is unable to attend or testify because of sickness or infirmity; or

(d) the party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(2) Any deposition may also be used by any party for the purpose of contradicting or impeaching the testimony of the deponent as a witness.

(3) If only a part of a deposition is offered in evidence by a party, an adverse party may require him to offer all of it which is relevant to the part offered and any party may offer other parts.

(4) Objections to receiving in evidence a deposition or part thereof may be made as provided in civil actions.

(5) For the purposes of this section, the word "deposition" shall in addition include any sworn testimony previously given by a witness which has been recorded and transcribed by a qualified stenographer and given in the presence of the defendant and cross-examined by him or his attorney on matters relevant to the trial or hearing where such deposition is sought to be used".

Cross-References

Objections to receiving deposition in evidence, Rules 30(c), 32, M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Discovery — Immunity for Witnesses

46-15-301. Repealed. Sec. 11, Ch. 202, L. 1985.

History: En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(1), (3); amd. Sec. 14, Ch. 713, L. 1979; amd. Sec. 1, Ch. 557, L. 1981.

46-15-302. Repealed. Sec. 11, Ch. 202, L. 1985.

History: (1), (2)En. 95-1801 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1801, R.C.M. 1947; (3)En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; Sec. 95-1803, R.C.M. 1947; R.C.M. 1947, 95-1801(d), 95-1803(2); amd. Sec. 1, Ch. 496, L. 1979.

46-15-303. Repealed. Sec. 11, Ch. 202, L. 1985.

History: En. 95-1804 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1804.

46-15-304 through 46-15-310 reserved.

46-15-311. Renumbered 46-15-331 by Code Commissioner, 1985.

46-15-312. Renumbered 46-15-332 by Code Commissioner, 1985.

46-15-313 through 46-15-320 reserved.

46-15-321. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. Sec. 1, Ch. 202, L. 1985.

46-15-322. Disclosure by prosecution. (1) Upon request, the prosecutor shall make available to the defendant for examination and reproduction the following material and information within the prosecutor's possession or control:

(a) the names, addresses, and statements of all persons whom the prosecutor may call as witnesses in the case-in-chief;

(b) all written or oral statements of the defendant and of any person who will be tried with the defendant;

(c) all written reports or statements of experts who have personally examined the defendant or any evidence in the particular case, together with the results of physical examinations, scientific tests, experiments, or comparisons;

(d) all papers, documents, photographs, or tangible objects that the prosecutor may use at trial or that were obtained from or purportedly belong to the defendant; and

(e) all material or information that tends to mitigate or negate the defendant's guilt as to the offense charged or that would tend to reduce the defendant's potential sentence.

(2) At the same time, the prosecutor shall inform the defendant of, and make available to the defendant for examination and reproduction, any written or recorded material or information within the prosecutor's control regarding:

(a) whether there has been any electronic surveillance of any conversations to which the defendant was a party;

(b) whether an investigative subpoena has been executed in connection with the case; and

(c) whether the case has involved an informant and, if so, the informant's identity if the defendant is entitled to know either or both of these facts under Rule 502 of the Montana Rules of Evidence.

(3) The prosecutor may impose reasonable conditions, including an appropriate stipulation concerning chain of custody, to protect physical evidence produced under subsection (1)(d).

(4) The prosecutor's obligation of disclosure extends to material and information in the possession or control of members of the prosecutor's staff and of any other persons who have participated in the investigation or evaluation of the case.

(5) Upon motion showing that the defendant has substantial need in the preparation of the case for additional material or information not otherwise provided for and that the defendant is unable, without undue hardship, to obtain the substantial equivalent by other means, the court, in its discretion, may order any person to make it available to the defendant. The court may, upon the request of any person affected by the order, vacate or modify the order if compliance would be unreasonable or oppressive. The prosecutor may not be required to prepare or disclose summaries of witnesses' testimony.

(6) The prosecutor shall furnish to the defendant no later than 5 days before trial or at a later time as the court may for good cause permit, together with their statements, a list of the names and addresses of all persons whom the prosecutor intends to call as rebuttal witnesses to evidence of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity or the defense that the defendant did not have a particular state of mind that is an element of the offense charged.

History: En. Sec. 2, Ch. 202, L. 1985; amd. Sec. 137, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section substituted references to defendant for references to accused; in (1), at beginning, inserted "request" and deleted "arraignment in district court or at such later time as the court may for good cause permit"; at beginning of (1)(c) deleted "the names and addresses"; at beginning of (1)(d) deleted "a list or copies of"; at end of (1)(e) substituted "the defendant's potential sentence" for "his punishment therefore"; in (2), before "control", deleted "possession or"; in (2)(b) substituted "an investigative subpoena" for "a search warrant"; at end of (2)(c) deleted "and 46-15-324(3)"; in (3) deleted former first sentence that read: "The prosecutor, upon written request, shall make available to the defendant for examination, testing, and reproduction any specified items contained in the list submitted under subsection (1)(d)" and at end substituted "subsection (1)(d)" for "this section"; in (5) inserted last sentence concerning preparation or disclosure of summaries of witness testimony; and made minor changes in style.

46-15-323. Disclosure by defendant. (1) At any time after the filing in district court of an indictment or information, the defendant, in connection with the particular crime charged, shall upon written request of the prosecutor and approval of the court:

(a) appear in a lineup;

(b) speak for identification by witnesses;

(c) be fingerprinted, palm printed, footprinted, or voiceprinted;

(d) pose for photographs not involving reenactment of an event;

(e) try on clothing;

(f) permit the taking of samples of his hair, blood, saliva, urine, or other specified materials that involve no unreasonable bodily intrusions;

(g) provide handwriting samples; or

(h) submit to a reasonable physical or medical inspection; however, the inspection does not include psychiatric or psychological examination.

(2) Within 10 days after the omnibus hearing in district court or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of good character or the defenses of alibi, compulsion, entrapment, justifiable use of force, or mistaken identity.

(3) Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist or psychologist or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect, the defendant did not have a particular state of mind that is an essential element of the offense charged.

(4) The notice must specify for each defense the names and addresses of the persons, other than the defendant, whom the defendant may call as witnesses in support of the defense, together with all written reports or statements made by them concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless he intends to use the privileged report or statement, or the witness who made it, at trial.

(5) Prior to trial the defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses and disclose their reports or statements as required by this section. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name of the witness is included on the list and the witness's report or statement has been disclosed as required by this section, except for good cause shown.

(6) Within 10 days after the omnibus hearing in district court or at a later time as the court may for good cause permit, the defendant shall make available to the prosecutor for testing, examination, or reproduction:

(a) the names, addresses, and statements of all persons, other than the defendant, whom the defendant may call as witnesses in the defense case-in-chief, together with their statements;

(b) the names and addresses of experts whom the defendant may call at trial, together with the results of their physical examinations, scientific tests, experiments, or comparisons, including all written reports and statements made by these experts in connection with the particular case; and

(c) all papers, documents, photographs, and other tangible objects that the defendant may use at trial.

(7) The defendant's obligation under this section extends to material and information within the possession or control of the defendant, defense counsel, and defense counsel's staff or investigators.

(8) Upon motion of the prosecutor showing that the prosecutor has substantial need in the preparation of the case for additional material or information not otherwise provided for, that the prosecutor is unable, without undue hardship, to obtain the substantial equivalent by other means, and that disclosure of the material or information will not violate the defendant's constitutional rights, the court, in its discretion, may order any person to make the material or information available to the prosecutor. The court may, upon request of any person affected by the order, vacate or modify the order

if compliance would be unreasonable or oppressive. The defense counsel may not be required to prepare or disclose summaries of witnesses' testimony.

History: **En. Sec. 3, Ch. 202, L. 1985; amd. Sec. 138, Ch. 800, L. 1991.**

Compiler's Comments

1991 Amendment: Throughout section substituted references to defendant for references to accused; in (1), at end, substituted "approval of the court" for "for good cause shown"; deleted former (2) that read: "(2) The accused is entitled to the presence of counsel at the taking of any evidence pursuant to subsection (1). Subsection (1) supplements and does not limit any other procedures established by law"; in (2) reduced time from "30 days after arraignment" to "10 days after the omnibus hearing"; at beginning of (3) inserted "Within 10 days after receiving a report of the defendant's mental condition from a psychiatrist or psychologist or at a later time as the court may for good cause permit, the defendant shall provide the prosecutor with a written notice of the defendant's intention to introduce evidence at trial of the defense that due to a mental disease or defect"; in (4), after "persons", inserted "other than the defendant" and after "defense" inserted "together with all written reports or statements made by them concerning the results of physical examinations, scientific tests, experiments, or comparisons, except that the defendant need not include a privileged report or statement unless he intends to use the privileged report or statement, or the witness who made it, at trial"; in (5), at end of first sentence, inserted "and disclose their reports or statements as required by this section", in second sentence, after "list", inserted "and the witness's report or statement has been disclosed as required by this section", and deleted former last sentence that read: "Any evidence that reasonably becomes available after the initial 30 days shall be admitted if 46-15-327 is complied with"; at beginning of (6) substituted "Within 10 days after the omnibus hearing in district court or at a later time as the court may for good cause permit" for "Simultaneously with the notice of defenses submitted under subsection (3)"; in (6)(a), after "witnesses", substituted "in the defense case-in-chief" for "at trial" and at end deleted "made by them in connection with the particular case"; at end of (7) substituted "defense counsel, and defense counsel's staff or investigators" for "or his attorneys and agents"; in (8) inserted last sentence concerning preparation and disclosure of summaries of witness testimony; and made minor changes in style.

Cross-References

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Notice of defense of mental disease or defect, 46-14-214.

46-15-324. Materials not subject to disclosure. (1) Except as provided in this section, disclosure is not required for the superseded notes or work product of the prosecuting or defense attorney.

(2) If exculpatory information is contained in the superseded notes or work product of the prosecution, that information must be disclosed.

History: **En. Sec. 4, Ch. 202, L. 1985; amd. Sec. 139, Ch. 800, L. 1991.**

Compiler's Comments

1991 Amendment: In (1) and (2), before "work product", inserted "superseded notes or"; deleted (3) that read: "(3) Disclosure of the existence of an informant or of the identity of an informant who will not be called to testify is not required if:

(a) disclosure would result in substantial risk to the informant or to his operational effectiveness; and

(b) the failure to disclose will not infringe the constitutional rights of the accused"; and made minor changes in style.

46-15-325. Failure to call a witness or raise a defense. The fact that a witness's name is on a list furnished pursuant to this part but the witness does not testify or that a matter contained in a pretrial notice is not raised may not be commented upon at trial unless the court, on motion of a party, allows comment after finding that the inclusion of the witness's name or the pretrial notice constituted an abuse of the applicable disclosure requirement or that other good cause is shown.

History: **En. Sec. 5, Ch. 202, L. 1985; amd. Sec. 140, Ch. 800, L. 1991.**

Compiler's Comments

1991 Amendment: Near beginning, after "pursuant to", substituted "this part but the witness does not testify" for "46-15-321 through 46-15-329"; and made minor changes in style.

46-15-326. Use of materials. Except as provided in 46-11-401, any materials, including witness lists, furnished to an attorney pursuant to 46-15-322 through 46-15-329 may not be disclosed to the public but may be disclosed to others only to the extent necessary for the proper conduct of the case.

History: En. Sec. 6, Ch. 202, L. 1985; amd. Sec. 261, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Substituted "46-15-322" for "46-15-321".

46-15-327. Continuing duty to disclose. If at any time after a disclosure has been made any party discovers additional information or material that would be subject to disclosure had it been known at the time of disclosure, the party shall promptly notify all other parties of the existence of the additional information or material and make an appropriate disclosure.

History: En. Sec. 7, Ch. 202, L. 1985; amd. Sec. 141, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor change in style.

46-15-328. Excision and protective orders. (1) Upon a motion of any party showing good cause, the court may at any time order that any disclosure be deferred or regulated when it finds:

(a) that the disclosure would result in a risk or harm outweighing any usefulness of the unrestricted disclosure to any party; and

(b) that the risk cannot be eliminated by a less substantial restriction of discovery rights.

(2) Whenever the court finds, on motion of any party, that only a portion of a document or other material is discoverable, it may authorize the party disclosing it to excise that portion of the material that is nondiscoverable and disclose the remainder.

(3) On motion of the party seeking a protective or excision order or in submitting for the court's determination the discoverability of any material or information, the court may permit that party to present the material or information for the inspection of the judge alone. Counsel for all other parties are entitled to be present when the presentation is made.

(4) If the court enters an order that any material or any portion of the material is not discoverable, the entire text of the material must be sealed and preserved in the record in the event of an appeal.

History: En. Sec. 8, Ch. 202, L. 1985; amd. Sec. 143, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), before "disclosure", inserted "any" and after "disclosure" deleted "of the identity of any witness be deferred for any reasonable period of time, not to extend beyond 5 days prior to the date set for trial, or that any other disclosures required by 46-15-321 through 46-15-329 be denied"; in (1)(a), before "disclosure", inserted "unrestricted"; in (2) and (4), after "discoverable", deleted "under 46-15-321 through 46-15-329"; and made minor changes in style.

46-15-329. Sanctions. If at any time during the course of the proceeding it is brought to the attention of the court that a party has failed to comply with any of the provisions of this part or any order issued pursuant to this part, the court may impose any sanction that it finds just under the circumstances, including but not limited to:

(1) ordering disclosure of the information not previously disclosed;

(2) granting a continuance;

(3) holding a witness, party, or counsel in contempt for an intentional violation;

(4) precluding a party from calling a witness, offering evidence, or raising a defense not disclosed; or

(5) declaring a mistrial when necessary to prevent a miscarriage of justice.

History: En. Sec. 9, Ch. 202, L. 1985; amd. Sec. 144, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In introductory clause, in two places, substituted "this part" for "46-15-321 through 46-15-329"; and at end of (3) inserted "for an intentional violation".

46-15-330. Investigation not to be impeded. Except as to matters to which discovery is restricted and except as to the defendant's counsel advising the defendant, a party or agent of a party may not discourage or obstruct communication between any person and any party or otherwise obstruct a party's investigation of the case.

History: En. Sec. 142, Ch. 800, L. 1991.

46-15-331. Compelling testimony or production of evidence — immunity. (1) Before or during trial in any judicial proceeding, a judge of the district or municipal court, upon request by the prosecutor or defense counsel, may require a person to answer any question or produce any evidence, even though personally incriminating, following a grant of immunity.

(2) If a person is required to give testimony or produce evidence in accordance with this section in any investigation or proceeding, compelled testimony or evidence and any information directly or indirectly derived from such testimony or evidence may not be used against the witness in any criminal prosecution.

(3) Nothing in this section prohibits a prosecutor from granting immunity from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled to testify if in the prosecutor's sole discretion it is determined that the ends of justice would be served.

(4) Immunity may not extend to prosecution or punishment for false statements given in any testimony required under this section.

History: En. 95-1807 by Sec. 7, Ch. 513, L. 1973; R.C.M. 1947, 95-1807; amd. Sec. 4, Ch. 577, L. 1983; Sec. 46-15-311, MCA 1983; redes. 46-15-331 by Code Commissioner, 1985; amd. Sec. 145, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning, substituted "judge of the district or municipal court" for "justice of the supreme court or judge of the district court" and at end inserted "following a grant of immunity"; and made minor changes in style.

46-15-332. Privileged matters. All matters which are privileged upon the trial are privileged against disclosure through any discovery procedure.

History: **En. 95-1803 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 26, Ch. 184, L. 1977; R.C.M. 1947, 95-1803(4); Sec. 46-15-312, MCA 1983; redes. 46-15-332 by Code Commissioner, 1985.**

Part 4

Evidence in Cases Involving Sexual Offenses

Part Cross-References

Provisions generally applicable to sexual crimes, 45-5-511.

46-15-401. Repealed. Sec. 263, Ch. 800, L. 1991.

History: **En. 95-1814 by Sec. 1, Ch. 384, L. 1977; R.C.M. 1947, 95-1814; amd. Sec. 1, Ch. 151, L. 1979; amd. Sec. 1, Ch. 8, L. 1983; amd. Sec. 1, Ch. 85, L. 1989.**

46-15-402. Procedure at videotaping. (1) The procedural and evidentiary rules of the state of Montana which are applicable to criminal trials within the state of Montana shall apply to the videotape proceedings authorized by this part.

(2) The district court judge, the prosecuting attorney, the victim, the defendant, the defendant's attorney, and such persons as are deemed necessary by the court to make the recordings authorized under this part shall be allowed to attend the videotape proceedings.

History: **En. 95-1815 by Sec. 2, Ch. 384, L. 1977; R.C.M. 1947, 95-1815.**

46-15-403. Court order to protect privacy of victim. Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: **En. 95-1816 by Sec. 3, Ch. 384, L. 1977; R.C.M. 1947, 95-1816.**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

46-15-404 through 46-15-410 reserved.

46-15-411. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.

(2) This section does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

History: **En. 95-1813 by Sec. 1, Ch. 128, L. 1977; R.C.M. 1947, 95-1813.**

Cross-References

Sexual intercourse without consent, 45-5-503.

CHAPTER 16

TRIAL IN DISTRICT COURT

Part 1 — General Provisions

46-16-101. Who given precedence on calendar.
46-16-102. Renumbered 46-16-110 by Code Commissioner, 1991.
46-16-103. Who decides questions of law and fact.
46-16-104. Plea of not guilty.
46-16-105. Plea of guilty.
46-16-106. Time to prepare for trial.
46-16-107. Failure of county attorney to attend.
46-16-108. Repealed.
46-16-109 reserved.
46-16-110. Right to jury trial — waiver.
46-16-111. Formation of trial jury.
46-16-112. Motion to discharge jury panel.
46-16-113 reserved.
46-16-114. Examination of prospective jurors.
46-16-115. Challenges for cause.
46-16-116. Peremptory challenges.
46-16-117. Time for challenges.
46-16-118. Alternate jurors.
46-16-119 reserved.
46-16-120. Misdemeanor offenses.
46-16-121. Felony offenses.
46-16-122. Absence of defendant from trial.
46-16-123. Absence of defendant on receiving verdict or at sentencing.
46-16-124 through 46-16-129 reserved.
46-16-130. Pretrial diversion.

Part 2 — Rules of Evidence for Criminal Cases

46-16-201. Applicability of rules of evidence and civil rules.
46-16-202. Evidence on trial for treason.
46-16-203. Renumbered 45-5-111 and 45-5-112 by Code Commissioner, 1983.
46-16-204. Defendant presumed innocent — reasonable doubt.
46-16-205 through 46-16-210 reserved.
46-16-211. Who are competent witnesses.
46-16-212. Competency of spouses.
46-16-213. Testimony of person legally accountable.
46-16-214 reserved.
46-16-215. Use of confession.
46-16-216. Videotaped testimony.

Part 3 — Selecting the Jury
(Renumbered by Code Commissioner, 1991)

Part 4 — Order of Trial

46-16-401. Order of trial.
46-16-402. When order may be departed from.
46-16-403. Evidence insufficient to go to jury.
46-16-404 through 46-16-409 reserved.
46-16-410. Settlement of jury instructions.

Part 5 — Conduct of Jury

46-16-501. Conduct of jury during trial.
46-16-502. View of relevant place or property.
46-16-503. Conduct of jury after retirement — advice from court.
46-16-504. Items that may be taken into jury room.
46-16-505. Activity of court during jury's absence.

Part 6 — Verdict—Disposition of Defendant

46-16-601. Renumbered 46-16-204 by Code Commissioner, 1991.
46-16-602. Renumbered 46-16-606 by Code Commissioner, 1991.
46-16-603. Form of verdict.
46-16-604. Poll of jury.
46-16-605. Verdict of not guilty — when defendant discharged.
46-16-606. Reasonable doubt as to which offense convicts only of least offense.
46-16-607. Conviction of lesser included offense.

Part 7 — Motion for a New Trial

46-16-701. Effect of new trial.
46-16-702. Motion for a new trial.

Part 1

General Provisions

Part Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

County Attorney's records of criminal actions, 2-15-501, 7-4-2715.

Records of Attorney General, 2-15-501.

Courts and judicial officers, Title 3, ch. 1.

General rules governing procedure, Title 3, ch. 1, part 3.

Court actions permitted on nonjudicial days, 3-1-302.

District Courts, Title 3, ch. 5.

District Court records — criminal actions, 3-5-506.

District Court Clerk's duties — record of witnesses, 3-5-510.

Criminal contempt, 45-7-309.

46-16-101. Who given precedence on calendar. Prosecutions against defendants held in custody must be disposed of in advance of prosecutions against defendants on bail unless for good cause the court shall direct an action to be tried out of its order.

History: En. 95-1906 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1906.

46-16-102. Renumbered 46-16-110 by Code Commissioner, 1991.

46-16-103. Who decides questions of law and fact. (1) All prosecutions deciding issues of fact must be tried by the court and jury, except on a plea of guilty.

(2) Questions of law must be decided by the court and questions of fact by the jury, except that on a trial for criminal defamation, the jury shall determine both questions of law and of fact. Questions of law and fact must be decided by the court when a trial by jury is waived under 46-16-110(3).

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(a), (b); amd. Sec. 17, Ch. 116, L. 1979; amd. Sec. 262, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At end changed subsection reference to 46-16-110.

Cross-References

Jury decides questions of law and fact in suits for libel and slander, Art. II, sec. 7, Mont. Const.

Province of court and jury, Title 26, ch. 1, part 2.

46-16-104. Plea of not guilty. The plea of not guilty puts in issue every material allegation of the indictment, information, or complaint.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(e).

46-16-105. Plea of guilty. (1) Before or during trial, a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(2) At any time before or after judgment the court may, for good cause shown, permit the plea of guilty to be withdrawn and a plea of not guilty substituted.

History: En. 95-1902 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1902.

46-16-106. Time to prepare for trial. After plea, the defendant shall be entitled to a reasonable time to prepare for trial.

History: En. 95-1907 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1907.

46-16-107. Failure of county attorney to attend. If the county attorney fails to attend the trial, the court may appoint some attorney-at-law to perform his duties.

History: En. 95-1903 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1903.

46-16-108. Repealed. Sec. 263, Ch. 800, L. 1991.

History: En. 95-1904 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part).

46-16-109 reserved.

46-16-110. Right to jury trial — waiver. (1) Defendants in all felony cases shall have a right to trial by a jury of 12 persons.

(2) The parties may agree in writing at any time before the verdict, with the approval of the court, that the jury shall consist of any number less than that to which they are entitled.

(3) Upon written consent of the defendant, a trial by jury may be waived.

History: En. 95-1901 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 4, L. 1973; R.C.M. 1947, 95-1901(c), (d); amd. Sec. 188, Ch. 800, L. 1991; Sec. 46-16-102, MCA 1989; redes. 46-16-110 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1), before "cases", substituted "felony" for "criminal" and at end substituted "of 12 persons" for "not to exceed 12 in number"; in (2), at end, substituted "that to which they are entitled" for "12"; in (3) substituted "defendant" for "parties"; and made minor change in style.

Cross-References

Rights of accused, Art. II, sec. 24, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.
Number of a trial jury, 3-15-106.
Trial juries in District Court, Title 3, ch. 15, part 5.
Jury trial of right, Rule 38, M.R.Civ.P. (see Title 25, ch. 20).
Selecting the jury, Title 46, ch. 16, part 1.

46-16-111. Formation of trial jury. (1) Trial juries in criminal cases are formed in the same manner as trial juries in civil cases.

(2) The qualifications of jurors and excuses from jury duty are prescribed in Title 3, chapter 15, part 3.

History: (1)En. 95-1905 by Sec. 1, Ch. 196, L. 1967; Sec. 95-1905, R.C.M. 1947; (2)En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; Sec. 95-1909, R.C.M. 1947; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1905, 95-1909(2)(a); amd. Sec. 5, Ch. 51, L. 1981; amd. Sec. 2, Ch. 92, L. 1989; amd. Sec. 189, Ch. 800, L. 1991; Sec. 46-16-301, MCA 1989; redes. 46-16-111 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1), in two places, substituted "cases" for "actions" and at end deleted "except that the total number of jurors drawn shall be at least the number of jurors needed plus the total number of peremptory challenges"; and made minor change in style.

Cross-References

Formation of the jury, Title 3, ch. 15, parts 3, 4, and 5; Title 25, ch. 7, part 2; Rule 47, M.R.Civ.P. (see Title 25, ch. 20).

46-16-112. Motion to discharge jury panel. (1) Any objection to the manner in which a jury panel has been selected or drawn must be raised by a motion to discharge the jury panel. Except for good cause shown, the motion must be made at least 5 days prior to the term for which the jury is drawn.

(2) The motion must be in writing supported by affidavit and must state facts that show that the jury panel was improperly selected or drawn.

(3) If the motion states facts that show that the jury panel has been improperly selected or drawn, it is the duty of the court to conduct a hearing. The burden of proof is on the movant.

(4) If the court finds that the jury panel was improperly selected or drawn, the court shall order the jury panel discharged and the selection or drawing of a new panel in the manner provided by law.

History: En. 95-1908 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1908; amd. Sec. 190, Ch. 800, L. 1991; Sec. 46-16-302, MCA 1989; redes. 46-16-112 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning of second sentence, inserted exception clause and deleted former last sentence that read: "For good cause shown, the court may entertain the motion at any time thereafter"; and made minor changes in style.

46-16-113 reserved.

46-16-114. Examination of prospective jurors. (1) The clerk of court shall make available to the parties a list of prospective jurors with their questionnaires when the names have been drawn.

(2) The prosecutor and the defendant or the defendant's attorney shall conduct the examination of prospective jurors. The judge may conduct an additional examination. The judge may limit the examination by the defendant, the defendant's attorney, or the prosecutor if the examination is improper.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(1), (3); amd. Sec. 191, Ch. 800, L. 1991; Sec. 46-16-303, MCA 1989; redes. 46-16-114 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (1), after "their", substituted "questionnaires" for "addresses"; in (2), at beginning of first sentence, substituted "prosecutor" for "county attorney" and near beginning of second and third sentences substituted "judge" for "court"; and made minor changes in style.

46-16-115. Challenges for cause. (1) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(2) A challenge for cause may be taken for all or any of the following reasons or for any other reason that the court determines:

(a) having consanguinity or relationship to the defendant or to the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(b) standing in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, or debtor and creditor with or being a member of the family or in the employment of the defendant or the person who is alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(c) being a party adverse to the defendant in a civil action or having complained against or been accused by the defendant in a criminal prosecution;

(d) having served on the grand jury that found the indictment or on a coroner's jury that inquired into the death of a person whose death is the subject of the indictment or information;

(e) having served on a trial jury that tried another person for the offense charged or a related offense;

(f) having been a member of a jury formerly sworn to try the same charge, the verdict of which was set aside or which was discharged without verdict after the case was submitted to it;

(g) having served as a juror in a civil action brought against the defendant for the act charged as an offense;

(h) if the offense charged is punishable with death, having any conscientious opinions concerning the punishment as would preclude finding the defendant guilty, in which case the person must neither be permitted nor compelled to serve as a juror;

(i) having a belief that the punishment fixed by law is too severe for the offense charged; or

(j) having a state of mind in reference to the case or to either of the parties that would prevent the juror from acting with entire impartiality and without prejudice to the substantial rights of either party.

(3) An excuse from service on a jury is not a cause of challenge but the privilege of the person excused.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(2)(b), (4); amd. Sec. 6, Ch. 51, L. 1981; amd. Sec. 192, Ch. 800, L. 1991; Sec. 46-16-304, MCA 1989; redes. 46-16-115 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: At end of (2)(e) inserted "or a related offense"; in (2)(h), after "opinions", inserted "concerning the punishment"; and made minor changes in style.

46-16-116. Peremptory challenges. (1) Each defendant is allowed eight peremptory challenges in capital cases and six in all other cases tried in the district court before a 12-person jury. There may not be additional challenges for separate counts charged in the indictment or information.

(2) If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges is eight.

(3) The state is allowed the same number of peremptory challenges as all of the defendants.

(4) In a criminal case tried before a six-person jury, the state and all the defendants are allowed three peremptory challenges each.

(5) When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(6); amd. Sec. 193, Ch. 800, L. 1991; Sec. 46-16-305, MCA 1989; redes. 46-16-116 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: In (4), after "tried", deleted "in the district court"; and made minor changes in style.

46-16-117. Time for challenges. All challenges must be interposed before the jury is sworn unless the cause of challenge is discovered after the jury is sworn and before the introduction of any evidence, in which case the court, in its discretion, may allow the challenge to be interposed.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(5); Sec. 46-16-306, MCA 1989; redes. 46-16-117 by Code Commissioner, 1991.

46-16-118. Alternate jurors. (1) The court may direct that one or more alternate jurors be selected in the same manner as principal jurors. The alternate jurors shall take the same oath as the principal jurors.

(2) Each party shall have one additional peremptory challenge for each alternate juror.

(3) Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury arrives at its verdict, become unable or disqualified to perform their duties. An alternate juror may not join the jury in its deliberation unless called upon by the court to replace a member of the jury. An alternate juror's conduct during the period in which the jury is considering its verdict is regulated by instructions of the trial court. An alternate juror who does not replace a principal juror must be discharged after the jury arrives at its verdict.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(7); amd. Sec. 194, Ch. 800, L. 1991; Sec. 46-16-307, MCA 1989; redes. 46-16-118 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: At beginning of (1) deleted "After the jury is impaneled and sworn"; and made minor changes in style.

46-16-119 reserved.

46-16-120. Misdemeanor offenses. In all cases in which the defendant is charged with a misdemeanor offense, the defendant may appear by counsel only, although the court may require the personal attendance of the defendant at any time.

History: En. Sec. 125, Ch. 800, L. 1991.

46-16-121. Felony offenses. (1) Except as otherwise provided in Title 46, the defendant in all cases in which a felony is charged must be present at the initial appearance, arraignment, entry of plea, preliminary examination, trial, and sentencing or when otherwise required by the court.

(2) The defendant may be present at all other proceedings.

(3) The presence of the defendant is not required before the supreme court.

History: En. Sec. 126, Ch. 800, L. 1991.

46-16-122. Absence of defendant from trial. (1) In a misdemeanor case, if the defendant fails to appear in person, either at the time set for the trial or at any time during the course of the trial and if the defendant's counsel is authorized to act on the defendant's behalf, the court shall proceed with the trial unless good cause for continuance exists.

(2) If the defendant's counsel is not authorized to act on the defendant's behalf as provided in subsection (1) or if the defendant is not represented by counsel, the court, in its discretion, may do one or more of the following:

(a) order a continuance;

(b) order bail forfeited;

(c) issue a bench warrant; or

(d) proceed with the trial after finding that the defendant had knowledge of the trial date and is voluntarily absent.

(3) After the trial of a felony offense has commenced in the defendant's presence, the absence of the defendant during the trial may not prevent the trial from continuing up to and including the return of a verdict if the defendant:

(a) has been removed from the courtroom for disruptive behavior after receiving a warning that removal will result if the defendant persists in conduct that is so disruptive that the trial cannot be carried on with the defendant in the courtroom; or

(b) is voluntarily absent and the offense is not one that is punishable by death.

(4) Nothing in this section limits the right of the court to order the defendant to be personally present at the trial for purposes of identification unless defense counsel stipulates to the issue of identity.

History: En. Sec. 127, Ch. 800, L. 1991.

46-16-123. Absence of defendant on receiving verdict or at sentencing. (1) In all misdemeanor cases, the verdict may be returned and the sentence imposed without the defendant being present.

(2) In all felony cases, the defendant shall appear in person when the verdict is returned or the sentence is imposed unless, after the exercise of due diligence to procure the defendant's presence, the court finds that it is in the interest of justice that the verdict be returned and the sentence be pronounced in the defendant's absence.

History: En. Sec. 128, Ch. 800, L. 1991.

46-16-124 through 46-16-129 reserved.

46-16-130. Pretrial diversion. (1) The prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

(a) that the defendant may not commit any offense;

(b) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;

(c) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;

(d) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense; or

(e) any other reasonable conditions.

(2) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(3) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(4) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

History: En. Sec. 129, Ch. 800, L. 1991.

Part 2

Rules of Evidence for Criminal Cases

Part Cross-References

Rights of accused — self-incrimination, Art. II, sec. 25, Mont. Const.

Evidence, Title 26.

Nonapplicability of privileges — abused, neglected, and dependent children, 41-3-404.

Extrajudicial confession — evidence of death, 45-5-111.

Inference of mental state, 45-5-112.

Evidence in trial for rape, 45-5-503.

Evidence in trial for promoting prostitution, 45-5-602 through 45-5-604.

Evidence in trial for endangering welfare of children, 45-5-622.

Perjured testimony, 45-7-201.

Perjury and false swearing — evidence required for conviction, 45-7-201, 45-7-202.

Tampering with witnesses, 45-7-206.

Tampering with physical evidence, 45-7-207.

Evidence in prosecution for obscenity, 45-8-201.

Criminal defamation — evidence required for conviction, 45-8-212.

Presumptions — possession of machine gun, 45-8-305.

Evidence — possession of machine gun, 45-8-306.

Blood, breath, and urine tests as evidence — driving while intoxicated, 61-8-403, 61-8-404.

46-16-201. Applicability of rules of evidence and civil rules. The Montana Rules of Evidence and the statutory rules of evidence in civil actions are applicable also to criminal actions, except as otherwise provided.

History: En. Sec. 2078, Pen. C. 1895; re-en. Sec. 9279, Rev. C. 1907; re-en. Sec. 11977, R.C.M. 1921; Cal. Pen. C. Sec. 1102; re-en. Sec. 11977, R.C.M. 1935; Sec. 94-7209, R.C.M. 1947; redes. 95-3001 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3001; amd. Sec. 195, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning inserted "Montana Rules of Evidence and the statutory" and at end deleted "in this code".

Cross-References

Evidence, Title 26.

Spousal privilege inapplicable in criminal action by one against the other, 26-1-802.

46-16-202. Evidence on trial for treason. Upon a trial for treason, the defendant cannot be convicted unless upon the testimony of two witnesses to the same overt act or upon confession in open court, nor can evidence be admitted of an overt act not expressly charged in the indictment or information, nor can the defendant be convicted unless one or more overt acts be expressly alleged therein.

History: En. Sec. 169, p. 243, Bannack Stat.; re-en. Sec. 294, p. 235, Cod. Stat. 1871; re-en. Sec. 294, 3d Div. Rev. Stat. 1879; re-en. Sec. 295, 3d Div. Comp. Stat. 1887; en. Sec. 2079, Pen. C. 1895; re-en. Sec. 9280, Rev. C. 1907; re-en. Sec. 11978, R.C.M. 1921; Cal. Pen. C. Sec. 1103; re-en. Sec. 11978, R.C.M. 1935; Sec. 94-7210, R.C.M. 1947; redes. 95-3002 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3002.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

46-16-203. Renumbered 45-5-111 and 45-5-112 by Code Commissioner, 1983.

46-16-204. Defendant presumed innocent — reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether the defendant's guilt is satisfactorily shown, the defendant must be found not guilty.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 307, 3d Div. Rev. Stat. 1879; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2072, Pen. C. 1895; re-en. Sec. 9273, Rev. C. 1907; re-en. Sec. 11971, R.C.M. 1921; Cal. Pen. C. Sec. 1096; re-en. Sec. 11971, R.C.M. 1935; Sec. 94-7203, R.C.M. 1947; redes. 95-2901 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-2901; amd. Sec. 196, Ch. 800, L. 1991; Sec. 46-16-601, MCA 1989; redes. 46-16-204 by Code Commissioner, 1991.

Compiler's Comments

1991 Amendment: At end substituted "the defendant must be found not guilty" for "he is entitled to an acquittal"; and made minor change in style.

Cross-References

Instructions to jury on standard of proof to meet burden of persuasion, 26-1-403.

Disputable presumption of innocence, 26-1-602.

46-16-205 through 46-16-210 reserved.

46-16-211. Who are competent witnesses. The rules for determining the competency of witnesses in civil actions are applicable also to criminal actions and proceedings, except as otherwise provided in this code.

History: En. Sec. 2440, Pen. C. 1895; re-en. Sec. 9482, Rev. C. 1907; re-en. Sec. 12175, R.C.M. 1921; Cal. Pen. C. Sec. 1321; re-en. Sec. 12175, R.C.M. 1935; Sec. 94-8801, R.C.M. 1947; redes. 95-3010 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3010.

Cross-References

Competency of witnesses, Art. VI, M.R.Ev. (see Title 26, ch. 10).

46-16-212. Competency of spouses. (1) Neither spouse may testify to the communications or conversations between spouses that occur during their marriage unless:

(a) consent of the defendant-spouse is obtained;

(b) the defendant-spouse has been charged with an act of criminal violence against the other; or

(c) the defendant-spouse has been charged with abuse, abandonment, or neglect of the other spouse or either spouse's children.

(2) Except as provided in subsection (1), a spouse is a competent witness for or against the other spouse.

History: En. Sec. 2441, Pen. C. 1895; re-en. Sec. 9483, Rev. C. 1907; amd. Sec. 1, Ch. 111, L. 1915; re-en. Sec. 12176, R.C.M. 1921; Cal. Pen. C. Sec. 1322; re-en. Sec. 12176, R.C.M. 1935; Sec. 94-8802, R.C.M. 1947; redes. 95-3011 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 50, Ch. 184, L. 1977; R.C.M. 1947, 95-3011; amd. Sec. 197, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (1) substituted "Neither spouse may testify to the communications or conversations between spouses that occur during their marriage unless" for "Except with the"; in (1)(a), at end, substituted "the defendant-spouse is obtained" for "both"; in (1)(b), at beginning, inserted "the defendant-spouse has been charged with an act of"; in (1)(c), at beginning, inserted "the defendant-spouse has been charged with abuse", before "children" inserted "the other spouse or either spouse's", and after "children" deleted "by either party, or abandonment or neglect of one by the other"; in (2), at beginning, inserted exception clause and at end deleted "in a criminal action or proceeding to which one or both are parties"; and made minor changes in style.

Cross-References

Spousal privilege, 26-1-802.

46-16-213. Testimony of person legally accountable. A person may not be found guilty of an offense on the testimony of one responsible or legally accountable for the same offense, as defined in 45-2-301, unless the testimony is corroborated by other evidence that in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense.

History: En. 95-3012 by Sec. 13, Ch. 513, L. 1973; amd. Sec. 51, Ch. 184, L. 1977; R.C.M. 1947, 95-3012; amd. Sec. 198, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "person may not be found guilty" for "conviction cannot be had" and deleted last sentence that read: "The corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof"; and made minor change in style.

46-16-214 reserved.

46-16-215. Use of confession. Before an extrajudicial confession of the defendant to the crime charged may be admitted into evidence, the prosecution shall introduce independent evidence tending to establish the commission of the crime charged.

History: En. Sec. 199, Ch. 800, L. 1991.

46-16-216. Videotaped testimony. (1) For any prosecution commenced under 45-5-502(3), 45-5-503, 45-5-505, or 45-5-507 or for prosecution of any offense against the person provided for in Title 45, chapter 5, involving a victim who is under 16 years of age, the testimony of the victim, at the request of the victim and with the concurrence of the prosecutor, may be recorded by means of videotape for presentation at trial. The recorded testimony may be presented at trial and must be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

(2) The procedural and evidentiary rules of the state that are applicable to criminal trials within the state apply to the videotape proceedings authorized by this section.

(3) The district court judge, the prosecutor, the victim, the defendant, the defendant's attorney, and other persons as are considered necessary by the court to make the recordings authorized under this section must be allowed to attend the videotape proceedings.

(4) Videotapes that are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

History: En. Sec. 200, Ch. 800, L. 1991; amd. Sec. 2, Ch. 288, L. 1991.

Compiler's Comments

Coordination: Section 2, Ch. 288, L. 1991, provided: "If Senate Bill No. 51 is passed and approved and if it includes a new section entitled "Videotaped testimony", which appears at page 177, line 10, of the second reading yellow copy, then that section is amended by inserting in the first sentence, after "45-5-507", the words "or for prosecution of any offense against the person provided for in Title 45, chapter 5, involving a victim who is under 16 years of age" and [section 1 of this act], amending 46-15-401, is void." The language from Ch. 288 has been inserted in this section.

Part 3

Selecting the Jury
(Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

46-16-301. Renumbered 46-16-111.
46-16-302. Renumbered 46-16-112.
46-16-303. Renumbered 46-16-114.
46-16-304. Renumbered 46-16-115.
46-16-305. Renumbered 46-16-116.
46-16-306. Renumbered 46-16-117.
46-16-307. Renumbered 46-16-118.

Part 4

Order of Trial

46-16-401. Order of trial. (1) After the jury is sworn but before the introduction of any evidence, the court may give the jury general instructions concerning the conduct of the trial. The court shall give the jury such cautionary instructions as may be required during the course of the trial.

(2) The prosecutor may make an opening statement and shall offer evidence in support of the prosecution. The defendant may make an opening statement prior to the prosecutor's offer of evidence or at the close of the prosecution's case but prior to the defendant's offer of evidence.

(3) The prosecutor and the defendant may, respectively, offer rebutting testimony only. However, the court, for good cause, may permit either party to offer evidence upon the original case at any time before the close of evidence.

(4) Prior to final arguments, the court shall inform the parties as to the instructions that will be given and read them to the jury.

(5) A written copy of the instructions, both general and special, must be delivered to the jury for its consideration during deliberations following the final arguments.

History: En. 95-1910 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 18, Ch. 420, L. 1975; R.C.M. 1947, 95-1910; amd. Sec. 201, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Substituted (1) concerning general instructions regarding the conduct of the trial after the jury is sworn but before the introduction of any evidence and cautionary instructions during the course of the trial for former text that read: "(1) The court may instruct the jury as to its duties. Such general instructions must be settled in the same manner as provided for the settlement of special instructions in subsection (4) of this section"; in (2), in first sentence, substituted "prosecutor may make an opening statement" for "county attorney must state the case" and in second sentence substituted "prosecutor's" for "state's" and at end substituted "at the close of the prosecution's case but prior to the defendant's offer of evidence" for "may state his defense and then offer evidence in support thereof after the state rests"; in (3), at end, inserted "at any time before the close of evidence"; deleted former (4) through (6) that read: "(4) (a) When the evidence is concluded, if either party desires special instructions to be given to the jury, such instructions shall be reduced to writing, numbered, signed by the party or his attorney, and delivered to the court.

(b) The instructions shall be settled by the court without the presence of the jury. At the settlement counsel for the parties or the defendant, if he is without counsel, shall be allowed reasonable opportunity to examine the instructions requested and proposed to be given by the court and to present and argue to the court objections to the adoption or rejection of any instruction offered by counsel or proposed to be given to the jury by the court. On such settlement of instructions, the respective counsel or the parties shall specify and state the particular ground on which an instruction is objected to. It shall not be sufficient to object generally that the instruction does not state the law or is against the law, but the objection must specify particularly wherein the instruction is insufficient or does not state the law or what particular clause therein is objected to.

(c) The court shall pass upon the objections to the instructions and shall either give each instruction as requested or proposed, positively refuse to do so, or give the instruction with modification. The court shall mark or endorse upon each instruction in such a manner that it shall distinctly appear what instructions were given in whole or in part and, in like manner, those refused or modified and, if modified, wherein and how modified. All instructions must be filed as a part of the record of the cause. No exceptions are necessary to the rulings of the court on the settlement of instructions.

(d) The court reporter shall be present at such settlement and shall take down all the objections to any or all of the instructions given or refused by the court together with modifications made therein and the ruling of the court thereon.

(5) When the instructions have been passed upon and settled by the court and before the arguments to the jury have begun, the court shall charge the jury in writing, giving in such charge only such instructions as have been passed upon and settled. In charging the jury, the court shall give them all matters of law which it thinks necessary for the jury's information in rendering a verdict.

(6) When the jury has been charged, unless the case is submitted to the jury on either side or on both sides without argument, the county attorney must commence and may conclude the argument. If several defendants having several defenses appear by different counsel, the court must determine their relative order in evidence and argument. Counsel, in arguing the case to the judge or jury, may argue and comment upon the law of the case as given in the instructions of the court, as well as upon the evidence of the case"; inserted (4) concerning giving of instructions; inserted (5) concerning delivery of instructions to jury; and made minor changes in style.

46-16-402. When order may be departed from. For good cause shown and in the discretion of the court, the order prescribed in 46-16-401 may be departed from.

History: En. 95-1911 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1911; amd. Sec. 202, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "For good cause shown" for "When the state of the pleading requires it or in any other case for good reasons".

46-16-403. Evidence insufficient to go to jury. When, at the close of the prosecution's evidence or at the close of all the evidence, the evidence is insufficient to support a finding or verdict of guilty, the court may, on its own motion or on the motion of the defendant, dismiss the action and discharge the defendant. However, prior to dismissal, the court may allow the case to be reopened for good cause shown.

History: En. 95-1909 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; R.C.M. 1947, 95-1909(9); amd. Sec. 203, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of first sentence substituted "prosecution's" for "state's" and near beginning of second sentence inserted "prior to dismissal".

46-16-404 through 46-16-409 reserved.

46-16-410. Settlement of jury instructions. (1) Any party may request special jury instructions. All requests for instructions must conform to the Uniform District Court Rules, and all instructions must be settled by the court out of the presence of the jury.

(2) A record must be made at the settlement of instructions.

(3) A party may not assign as error any portion of the instructions or omission from the instructions unless an objection was made specifically stating the matter objected to, and the grounds for the objection, at the settlement of instructions.

(4) The presence of the defendant is not required during the settlement of instructions.

History: En. Sec. 204, Ch. 800, L. 1991.

Part 5

Conduct of Jury

46-16-501. Conduct of jury during trial. (1) The jurors sworn to try an action may at any time, in the discretion of the court, be permitted to separate or be ordered to remain sequestered in the charge of a proper officer. If sequestered, the officer must be sworn to keep the jurors together, to allow no person to communicate with the jury or to personally communicate with the jury on any subject connected with the trial, and to return the jury into court as directed.

(2) Whether permitted to separate or sequestered, at each adjournment of the court, the jurors must be admonished that it is their duty not to converse among themselves or with anyone else on any subject connected with the trial or to form or express any opinion on the trial until the cause is finally submitted to them.

(3) In all cases appealed to the supreme court, it must be conclusively considered that the court or judge gave the proper admonition in accordance with the provision of subsection (2) unless the record affirmatively shows the contrary.

History: En. 95-1904, 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1904(part), 95-1913(a), (e); amd. Sec. 205, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence after "time", deleted "before the submission of the case" and after "separate or be" substituted "ordered to remain sequestered" for "kept" and at beginning of second sentence inserted "If sequestered", after "together" deleted "until the next meeting of the court", and at end substituted "as directed" for "at the next meeting thereof"; in (3) deleted reference to subsection (a) of subsection (2); and made minor changes in style.

46-16-502. View of relevant place or property. When the court considers it proper that the jury view any place or personal property pertinent to the case, it will order the jury to be conducted in a body under the custody of the sheriff or bailiff to view the place or personal property in the presence of the court, the prosecutor, the defendant, and the defendant's counsel. The place or personal property will be shown them by a person appointed by the court for that purpose, and they may personally inspect the place or personal property. The sheriff or bailiff must be sworn to allow no person to speak or otherwise communicate with the jury or to personally communicate with the jury on any subject connected with the trial and to return them into the courtroom without unnecessary delay or at a specified time, as the court may direct.

History: En. 95-1912 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1912; amd. Sec. 206, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence, after "presence of the", inserted "court, the prosecutor"; and made minor changes in style.

Cross-References

View by jury of premises, 25-7-401.

46-16-503. Conduct of jury after retirement — advice from court. (1) When the jury retires to consider its verdict, an officer of the court must be appointed to keep the jurors together and to prevent conversations between the jurors and others.

(2) After the jury has retired for deliberation, if there is any disagreement among the jurors as to the testimony or if the jurors desire to be informed on any point of law arising in the cause, they shall notify the officer appointed to keep them together, who shall then notify the court. The information requested may be given, in the discretion of the court, after consultation with the parties.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(b), (d); amd. Sec. 18, Ch. 116, L. 1979; amd. Sec. 207, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (2), at end of first sentence, substituted "shall notify the officer appointed to keep them together, who shall then notify the court" for "must require the officer to conduct them into court", at beginning of second sentence deleted "When the jurors are brought into court" and at end inserted "after consultation with the parties", and deleted former last sentence that read: "If such information is given, it must be given in the presence of the county attorney and the defendant and his counsel".

Cross-References

Conduct of jury after case submitted to it, 25-7-403.

Jury's request for further information, 25-7-405.

46-16-504. Items that may be taken into jury room. Upon retiring for deliberation, the jurors may take with them the written jury instructions read by the court, notes of the proceedings taken by themselves, and all exhibits that have been received as evidence in the cause that in the opinion of the court will be necessary.

History: En. 95-1913 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1913(c); amd. Sec. 208, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Substituted present language concerning taking written instructions, notes, and exhibits for deliberations for former text that read: "Upon retiring for deliberation, the jury may take with them all papers which have been received as evidence in the cause, except depositions or copies of such papers as ought not, in the opinion of the court, to be taken from the person having them in his possession. The jury may also take with them any exhibits which the court may deem proper and notes of the proceedings taken by themselves".

Cross-References

Papers which may be taken into jury room, 25-7-404.

46-16-505. Activity of court during jury's absence. While the jury is absent, the court may adjourn or conduct other business, but it must be open for every purpose connected with the cause submitted to the jury until a verdict is returned or the jury discharged.

History: En. 95-1914 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1914; amd. Sec. 209, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: After adjourn substituted "or conduct" for "from time to time as to"; and made minor change in style.

Part 6

Verdict — Disposition of Defendant

Part Cross-References

Treason — requirements for conviction, Art. II, sec. 30, Mont. Const.

Evidence sufficient for conviction — Alcoholic Beverage Code, 16-6-205.

Requirements for conviction — criminal defamation, 45-8-212.

46-16-601. Renumbered 46-16-204 by Code Commissioner, 1991.

46-16-602. Renumbered 46-16-606 by Code Commissioner, 1991.

46-16-603. Form of verdict. (1) The jury shall return a verdict as instructed by the court. The verdict must be unanimous in all criminal actions. The verdict must be signed by the foreman and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. If the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

History: Ap. p. Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 131, L. 1974; amd. Sec. 28, Ch. 184, L. 1977; Sec. 95-1909, R.C.M. 1947; Ap. p. Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; Sec. 95-1915, R.C.M. 1947; R.C.M. 1947, 95-1909(8), 95-1915(1) thru (3); amd. Sec. 210, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted "verdict as instructed by the court" for "general verdict to each offense charged"; deleted (3) that read: "(3) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense"; and made minor change in style.

Cross-References

Right to unanimous verdicts, Art. II, sec. 26, Mont. Const.

46-16-604. Poll of jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged.

History: En. 95-1915 by Sec. 1, Ch. 196, L. 1967; Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 2, Ch. 4, L. 1973; amd. Sec. 29, Ch. 184, L. 1977; R.C.M. 1947, 95-1915(4).

46-16-605. Verdict of not guilty — when defendant discharged. If a verdict of not guilty is returned and the defendant is not detained for any other legal cause, the defendant must be discharged as soon as the judgment is given.

History: En. 95-1916 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-1916; amd. Sec. 211, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "a verdict of not guilty is returned" for "judgment of acquittal is given on a general verdict" and at end, after "given", deleted "except, where the acquittal is because of a variance between the pleading and proof which may be obviated by a new indictment or information, the court may order his detention to the end that a new indictment or information may be filed by the county attorney"; and made minor change in style.

46-16-606. Reasonable doubt as to which offense convicts only of least offense. When it appears beyond a reasonable doubt that the defendant has committed an offense but there is reasonable doubt as to whether he is guilty of a given offense or one or more lesser included offenses, he may only be convicted of the greatest included offense about which there is no reasonable doubt.

History: En. Sec. 186, p. 245, Bannack Stat.; re-en. Sec. 307, p. 237, Cod. Stat. 1871; re-en. Sec. 308, 3d Div. Comp. Stat. 1887; en. Sec. 2073, Pen. C. 1895; re-en. Sec. 9274, Rev. C. 1907; re-en. Sec. 11972, R.C.M. 1921; Cal. Pen. C. Sec. 1097; re-en. Sec. 11972, R.C.M. 1935; Sec. 94-7204, R.C.M. 1947; redes. 95-2902 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 48, Ch. 184, L. 1977; R.C.M. 1947, 95-2902; Sec. 46-16-602, MCA 1989; redes. 46-16-606 by Code Commissioner, 1991.

Cross-References

Instructions to jury on standard of proof required to meet burden of persuasion, 26-1-403.

46-16-607. Conviction of lesser included offense. (1) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included in the offense charged.

(2) A lesser included offense instruction must be given when there is a proper request by one of the parties and the jury, based on the evidence, could be warranted in finding the defendant guilty of a lesser included offense.

(3) When a lesser included offense instruction is given, the court shall instruct the jury that it must reach a verdict on the crime charged before it may proceed to a lesser included offense. Upon request of the defendant at the settling of instructions, the court shall instruct the jury that it may consider the lesser included offense if it is unable after reasonable effort to reach a verdict on the greater offense.

History: En. Sec. 212, Ch. 800, L. 1991.

Part 7

Motion for a New Trial

46-16-701. Effect of new trial. The granting of a new trial places the parties in the same position as if there had been no trial.

History: En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(1); amd. Sec. 213, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Deleted definition of new trial that read: "A "new trial" is a reexamination of the issue in the same court before another jury after a verdict or finding has been rendered".

Cross-References

Error in instruction as ground for new trial, 46-16-401.

46-16-702. Motion for a new trial. (1) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial must be in writing and must specify the grounds for a new trial. The motion must be filed by the defendant within 30 days following a verdict or finding of guilty and be served upon the prosecution.

(3) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(a) deny the motion;

(b) grant a new trial; or

(c) modify or change the verdict or finding by finding the defendant guilty of a lesser included offense or finding the defendant not guilty.

History: En. 95-2101 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 35, Ch. 184, L. 1977; R.C.M. 1947, 95-2101(2); amd. Sec. 19, Ch. 116, L. 1979; amd. Sec. 214, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (2), after "guilty", deleted "reasonable notice of the motion" and at end substituted "state" for "prosecution"; and made minor changes in style.

Cross-References

Scope of appeal by state, 46-20-103.

CHAPTER 17

LOWER COURT PROCEEDINGS

Part 1 — Preliminary Matters—Justices' and City Courts

46-17-101. Initiation of proceedings — amending the complaint.
46-17-102. Record of proceedings.
46-17-103. Change of place of trial.

Part 2 — The Trial—Justices' and City Courts

46-17-201. Juries in misdemeanor cases.
46-17-202. Formation of trial jury for justices', municipal, and city courts.
46-17-203. Plea of guilty.
46-17-204. Time to prepare for trial.
46-17-205. Presence of defendant.
46-17-206 through 46-17-210 reserved.
46-17-211. Verdict.

Part 3 — Procedure After Trial—Justices' and City Courts

46-17-301. Sentence and judgment.
46-17-302. Execution of judgment.
46-17-303. Deposit of fines.
46-17-304. Disposition of fines for city ordinance violations when appealed.

46-17-305 through 46-17-310 reserved.
46-17-311. Appeal from justices', municipal, and city courts.

Part 4 — Procedure in Municipal Court

46-17-401. Applicability of district court rules.
46-17-402. Fees and fines.
46-17-403. Jury trial.
46-17-404. Appeals.

Chapter Cross-References

Justices' Courts, Title 3, ch. 10.

City Courts, Title 3, ch. 11.

Part 1

Preliminary Matters — Justices' and City Courts

Part Cross-References

Duty of police chief in regard to City Court, 7-32-4105.

46-17-101. Initiation of proceedings — amending the complaint. (1) In justices' and city courts, all criminal prosecutions must be commenced by complaint under oath.

(2) The complaint may be amended at any time before verdict or finding with leave of court.

History: En. 95-2001 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2001; amd. Sec. 2, Ch. 62, L. 1981.

Cross-References

Prosecution of criminal offenses, Art. II, sec. 20, Mont. Const.

46-17-102. Record of proceedings. A docket must be kept by the justice of the peace or city judge, in which must be entered each action and the proceedings of the court therein.

History: En. 95-2002 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2002.

46-17-103. Change of place of trial. (1) The defendant or prosecution may move before trial for a change of place of trial on the ground that there exists in the county in which the charge is pending such prejudice that a fair trial cannot be had in such county.

(2) The motion shall be in writing and supported by affidavit which shall state facts showing the nature of the prejudice alleged. The defendant or the state may file counteraffidavits. The court shall conduct a hearing and determine the merits of the motion.

(3) If the court determines that there exists in the county where the prosecution is pending such prejudice that a fair trial cannot be had, it shall

transfer the cause to any other court of competent jurisdiction in any county where a fair trial may be had.

History: **En. 95-2003 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 19, Ch. 420, L. 1975; R.C.M. 1947, 95-2003.**

Part 2

The Trial — Justices' and City Courts

Part Cross-References

General rules governing proceedings, Title 3, ch. 1, part 3.

Trial jury defined, 3-15-104.

Number of jury — Justices' Courts, 3-15-107.

Jury fees — courts not of record, 3-15-203.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries in inferior courts — summoning and impaneling, Title 3, ch. 15, part 7.

Witness fees — courts not of record, 26-2-503.

46-17-201. Juries in misdemeanor cases. (1) The defendant in a misdemeanor case is entitled to a jury of six qualified persons, but the parties may agree to a number less than six at any time before the verdict.

(2) Upon consent of the defendant, a trial by jury may be waived.

History: **En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(1); amd. Sec. 215, Ch. 800, L. 1991.**

Compiler's Comments

1991 Amendment: In (1), after "defendant", inserted "in a misdemeanor case" and at end inserted "at any time before the verdict"; substituted (2) concerning waiver of jury trial by defendant for former text that read: "(2) A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket"; and deleted (3) that read: "(3) Questions of law shall be decided by the court and questions of fact by the jury except that, when a jury trial is waived, the court shall determine both questions of law and questions of fact".

Cross-References

Right to trial by jury, Art. II, sec. 26, Mont. Const.

46-17-202. Formation of trial jury for justices', municipal, and city courts. (1) At the time of preparing the district court jury list, the county commissioners and clerk and recorder shall prepare a jury list for each justice's, municipal, and city court within the county. Each list must consist of residents of the appropriate county, city, or town. The lists must be selected in any reasonable manner that ensures fairness, and each list must include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The lists must be filed in the office of the clerk of the district court. The appropriate list must be posted in a public place in each county, city, or town, and the list must comprise the trial jury list for the ensuing year for the county, city, or town.

(2) Trial jurors must be summoned from the jury list by notifying each one orally that the person is summoned and of the time and place at which attendance is required.

History: En. 95-2005 by Sec. 1, Ch. 196, L. 1967; amd. Sup. Ct. Ord. 11450-2-3-4, Oct. 10, 1968, eff. Dec. 1, 1968; amd. Sec. 20, Ch. 420, L. 1975; amd. Sec. 31, Ch. 184, L. 1977; R.C.M. 1947, 95-2005; amd. Sec. 18, Ch. 379, L. 1983; amd. Sec. 216, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence after "justice's", inserted "municipal"; deleted (3) and (4) that read: "(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 46-16-304(2). Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as all of the defendants"; and made minor changes in style.

Cross-References

Trial jury defined, 3-15-104.

Number of jury — Justices' Courts, 3-15-107.

Jurors — competency and exemptions, Title 3, ch. 15, part 3.

Jurors — penalty for nonappearance, 3-15-321.

Juries in inferior courts — summoning and impaneling, Title 3, ch. 15, part 7.

46-17-203. Plea of guilty. (1) Before or during trial, a plea of guilty may be accepted when:

(a) the defendant enters a plea of guilty in open court; and

(b) the court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of the plea.

(2) A plea of guilty in a justices' court, city court, or other court of limited jurisdiction waives the right of trial de novo in district court. A defendant must be informed of the waiver before the plea is accepted, and the justice or judge shall question the defendant to ensure that the plea and waiver are entered voluntarily.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(2); amd. Sec. 3, Ch. 277, L. 1989.

46-17-204. Time to prepare for trial. After the plea, the defendant is entitled to a reasonable time to prepare for trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(4).

46-17-205. Presence of defendant. The trial may be had in the absence of the defendant but, if his presence is necessary for any purpose, the court may require the personal attendance of the defendant at the trial.

History: En. 95-2004 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 30, Ch. 184, L. 1977; R.C.M. 1947, 95-2004(3).

46-17-206 through 46-17-210 reserved.

46-17-211. Verdict. (1) The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter it or cause it to be entered in the minutes. The verdict of the jury must be unanimous.

(2) When several defendants are tried together and the jury cannot agree upon a verdict as to all, the jury may render a verdict as to those in regard to whom it does agree. A judgment must be entered accordingly on the verdict, and the case as to the rest may be tried by another jury.

(3) When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(4) The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict unless for good cause the court sooner discharges them.

History: En. 95-2006 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 3, Ch. 4, L. 1973; rep. and re-en. 95-2006 by Sec. 30, Ch. 513, L. 1973; amd. Sec. 32, Ch. 184, L. 1977; R.C.M. 1947, 95-2006.

Cross-References

Unanimous verdict required, Art. II, sec. 26, Mont. Const.

Part 3

Procedure After Trial — Justices' and City Courts

Part Cross-References

Procedure on appeal — Alcoholic Beverage Code, 16-6-202.

46-17-301. Sentence and judgment. (1) If a judgment of acquittal is rendered, the defendant must be immediately discharged.

(2) After a plea or verdict of guilty or after a judgment against the defendant, the court must designate a time for sentencing, which must be within a reasonable time after the rendering of the verdict or judgment. The sentence must be entered in the minutes of the court as soon as it is imposed.

(3) If the defendant pleads guilty or is convicted either by the court or by a jury, the court must impose a sentence as provided in chapter 18, part 2, of this title. If alcohol or other drugs are involved, the court may impose such rehabilitative measures as it considers advisable under the circumstances.

(4) The determination and imposition of sentence are the exclusive duty of the court.

History: En. 95-2007 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 1, Ch. 348, L. 1973; amd. Sec. 33, Ch. 184, L. 1977; R.C.M. 1947, 95-2007.

46-17-302. Execution of judgment. (1) The judgment must be executed by the sheriff, constable, marshal, or policeman of the jurisdiction in which the conviction was had.

(2) When a judgment of imprisonment is entered, a certified copy thereof must be delivered to the sheriff or other officer, which is a sufficient warrant for its execution.

(3) If a judgment is rendered imposing a fine only without imprisonment for nonpayment and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

(4) A judgment that the defendant pay a fine may also direct that he be imprisoned until the fine be satisfied in the proportion of 1 day's imprisonment for every $25 of the fine. When the judgment is rendered, the defendant must be held in custody the time specified in the judgment unless the fine is paid.

(5) Any officer charged with the collection of fines under the provisions of this chapter must return the execution to the judge within 30 days from its delivery to him and pay over to the judge the money collected, deducting his fees for the collection.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part); amd. Sec. 1, Ch. 270, L. 1989.

46-17-303. Deposit of fines. All fines imposed and collected by a city court must be paid to the treasurer of the county, city, or town, as the case may be, within 30 days after the receipt of the same. The city judge must take duplicate receipts therefor, one of which he must deposit with the county, city, or town clerk, as the case may be.

History: En. 95-2008 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2008(part); amd. Sec. 29, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

46-17-304. Disposition of fines for city ordinance violations when appealed. All fines obtained from a judgment in a higher court on an appeal from a city court for violation of a city ordinance, tried de novo in the higher court, shall be paid to the county treasurer, who shall, before 31 days after receipt of the sum, forward one-half of the amount to the treasurer of the city in which the action originated.

History: En. Sec. 1, Ch. 32, L. 1967; R.C.M. 1947, 95-2008.1.

46-17-305 through 46-17-310 reserved.

46-17-311. Appeal from justices', municipal, and city courts. (1) Except for cases in which legal issues are preserved for appeal pursuant to 46-12-204, all cases on appeal from a justice's, municipal, or city court must be tried anew in the district court and may be tried before a jury of six selected in the same manner as for other criminal cases.

(2) The defendant may appeal to the district court by filing written notice of intention to appeal within 10 days after a judgment is rendered following trial. In the case of an appeal by the prosecution, the notice must be filed within 10 days of the date the order complained of is given. The prosecution may only appeal in the cases provided for in 46-20-103.

(3) Within 30 days of filing the notice of appeal, the court shall transfer the entire record of the court of limited jurisdiction to the district court.

History: En. 95-2009 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 34, Ch. 184, L. 1977; amd. Sec. 55, Ch. 344, L. 1977; R.C.M. 1947, 95-2009; amd. Sec. 20, Ch. 116, L. 1979; amd. Sec. 1, Ch. 333, L. 1985; amd. Sec. 4, Ch. 277, L. 1989; amd. Sec. 217, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, substituted "for cases in which legal issues are preserved for appeal pursuant to 46-12-204" for "as provided in 46-17-203", after "justice's" inserted "municipal", and at end substituted "for other criminal cases" for "a trial jury in a civil action, except that the total number of jurors drawn shall be at least six plus the total number of peremptory challenges"; in (2), at beginning of first sentence, substituted "The defendant" for "A party", substituted "filing" for "giving", and after "judgment" deleted "except that the state" and inserted "is rendered following trial" and inserted second sentence concerning notice of appeal by prosecution; in (3), after "days", inserted "of filing the notice of appeal, the court shall transfer", after "record of the" substituted "court of limited jurisdiction to the district court" for "justice's or city court proceedings must be transferred to the district court or the appeal must be dismissed", and deleted last sentence that read: "It is the duty of the appellant to perfect the appeal"; and made minor changes in style.

Coordination Instruction — Amendment Void: Section 2, Ch. 470, L. 1991, provided: "If Senate Bill No. 51 is passed and approved and if Senate Bill No. 51 contains a section amending 46-17-311, then [this act] is void." Senate Bill No. 51 was approved May 23, 1991, as Ch. 800, L. 1991, and included an amendment to 46-17-311. Therefore, the amendment to 46-17-311 contained in sec. 1, Ch. 470, L. 1991, is void.

Cross-References

Appellate jurisdiction of District Court, 3-5-303.

City Attorney to prosecute appeals to District Court, 3-11-301.

Part 4

Procedure in Municipal Court

46-17-401. Applicability of district court rules. Except as otherwise provided by Title 3, chapter 6, and this part, the proceedings and practice in municipal court shall be the same as in district court.

History: En. Sec. 20, Ch. 177, L. 1935; re-en. Sec. 5094.19, R.C.M. 1935; R.C.M. 1947, 11-1719(part).

46-17-402. Fees and fines. The fees and fines in municipal court shall be the same as the fees and fines provided by law or ordinance, and all fees and fines collected by the court shall be paid into the city treasury.

History: En. Sec. 18, Ch. 177, L. 1935; re-en. Sec. 5094.18, R.C.M. 1935; amd. Sec. 10, Ch. 429, L. 1977; R.C.M. 1947, 11-1718.

46-17-403. Jury trial. In criminal causes arising under the state law, either party shall be entitled to a jury trial, as provided in justices' courts, except that the police officer shall perform the duties thereto prescribed to the sheriff or constable.

History: En. Sec. 15, Ch. 177, L. 1935; re-en. Sec. 5094.15, R.C.M. 1935; R.C.M. 1947, 11-1715(part).

Cross-References

Trial by jury, Art. II, sec. 26, Mont. Const.

46-17-404. Appeals. (1) A party may appeal to district court from a judgment of municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has jurisdiction to hear the appeal, except:

(a) if the judgment of the municipal court includes incarceration, no minimum amount in controversy may be required for appeal; and

(b) upon petition by an aggrieved party, the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

History: **En. Sec. 17, Ch. 177, L. 1935; re-en. Sec. 5094.17, R.C.M. 1935; amd. Sec. 9, Ch. 429, L. 1977; R.C.M. 1947, 11-1717(1), (2).**

CHAPTER 18

SENTENCE AND JUDGMENT

Part 1 — Policy and Preliminary Procedure

46-18-101. Correctional policy.
46-18-102. Rendering judgment and pronouncing sentence.
46-18-103. Sentence to be imposed by judge.
46-18-104. Definitions.
46-18-105. Community corrections facilities or programs.
46-18-106 through 46-18-110 reserved.
46-18-111. Presentence investigation — when required.
46-18-112. Content of presentence investigation report.
46-18-113. Availability of presentence investigation report.
46-18-114 reserved.
46-18-115. Sentencing hearing.
46-18-116. Judgment.
46-18-117. Correction of sentence.

Part 2 — Form of Sentence

46-18-201. Sentences that may be imposed.
46-18-202. Additional restrictions on sentence.
46-18-203. Revocation of suspended or deferred sentence.
46-18-204. Dismissal after deferred imposition.
46-18-205 through 46-18-210 reserved.
46-18-211. When no place of imprisonment is specified.
46-18-212. When no penalty is specified.
46-18-213. When no penalty is specified — felony.
46-18-214 through 46-18-219 reserved.
46-18-220. Sentences for certain offenses committed in state prison — death penalty.
46-18-221. Additional sentence for offenses committed with a dangerous weapon.
46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence.
46-18-223. Hearing to determine application of exceptions.
46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition.
46-18-225. Criteria for sentencing nonviolent felony offenders.
46-18-226 through 46-18-230 reserved.
46-18-231. Fines in felony and misdemeanor cases.
46-18-232. Payment of costs by defendant.
46-18-233. Fine or costs as a condition on suspended or deferred sentence.
46-18-234. When payment of fine or costs due.
46-18-235. Disposition of money collected as fines and costs.
46-18-236. Imposition of charge upon conviction or forfeiture — administration.
46-18-237 through 46-18-240 reserved.
46-18-241. Condition of restitution.

46-18-242. Investigation and report of victim's loss.
46-18-243. Definition.
46-18-244. Type and time of payment — defenses.
46-18-245. Supervision of payment.
46-18-246. Waiver or modification of payment.
46-18-247. Default.
46-18-248. Rights of crime victims' compensation account.
46-18-249. Civil actions by victim.
46-18-250. Victim's location unknown — payments to restitution fund — use of restitution fund.
46-18-251 through 46-18-253 reserved.
46-18-254. Release of sexual offender — duties of court and department.
46-18-255. Sentence upon conviction — restriction on employment.
46-18-256. Sexually transmitted disease testing — test procedure.
46-18-257 through 46-18-260 reserved.
46-18-261. Recovery of suppression and investigation expenses for fires caused by arson.

Part 3 — Death Penalty

46-18-301. Hearing on imposition of death penalty.
46-18-302. Evidence that may be received.
46-18-303. Aggravating circumstances.
46-18-304. Mitigating circumstances.
46-18-305. Effect of aggravating and mitigating circumstances.
46-18-306. Specific written findings of fact.
46-18-307. Automatic review of sentence.
46-18-308. Time for review — consolidation with appeal.
46-18-309. Transmission of transcript and record of trial.
46-18-310. Supreme court's determination as to the sentence.

Part 4 — Factors That Reduce Sentence

46-18-401. Consecutive sentences.
46-18-402. Credit for time served.
46-18-403. Credit for incarceration prior to conviction.
46-18-404. Designation as nondangerous offender for purposes of parole eligibility.

Part 5 — Persistent Felony Offenders

46-18-501. Definition of persistent felony offender.
46-18-502. Sentencing of persistent felony offender.
46-18-503. Renumbered 46-13-108 by Code Commissioner, 1991.

Part 6 — Procedure After Sentencing

46-18-601. Judgment in writing — lien.
46-18-602. Repealed.
46-18-603. Disposition of fines and forfeitures.
46-18-604. Transmittal of sentencing data to supreme court — compilation.

Part 7 — Jail Work Release Program

46-18-701. Parole during employment hours.
46-18-702. Disposition of prisoner's earnings.
46-18-703. Transfer to another county.
46-18-704. Reduction of sentence.
46-18-705. Effect of violation of conditions.

Part 8 — Effect of Conviction

46-18-801. Effect of conviction — civil disabilities.

Part 9 — Appellate Review of Legal Sentences

46-18-901. Review division of the supreme court for review of sentences.

46-18-902. Interested judge not to act.
46-18-903. Application for review.
46-18-904. Procedure upon review.
46-18-905. Decision — finality, report of.

Part 10 — Home Arrest

46-18-1001. Definitions.
46-18-1002. Home arrest — petition — agreement.
46-18-1003. Home arrest — conditions — fees — consent of cohabitors.
46-18-1004. Home arrest — ineligibility.
46-18-1005. Home arrest — responsibility for own living expenses — government benefits.
46-18-1006. Home arrest — list of offenders.

Part 1

Policy and Preliminary Procedure

46-18-101. Correctional policy. (1) It is the purpose of this section to declare the correctional policy of the state of Montana. Laws for the punishment of crime and for the rehabilitation of the convicted are drawn to implement the policy established by this section.

(2) The correctional policy of the state of Montana is to protect society by preventing crime through punishment and rehabilitation of the convicted. The legislature finds that an individual is responsible for and must be held accountable for his actions. Corrections laws and programs must be implemented to impress upon each individual his responsibility for obeying the law. To achieve this end, it is the policy of the state to assure that prosecution of criminal offenses occurs whenever probable cause exists and that punishment of the convicted is certain, timely, and consistent. Furthermore, it is the state's policy that persons convicted of a crime shall be dealt with in accordance with their individual characteristics, circumstances, needs, and potentialities.

(3) (a) Sentences imposed upon those convicted of crime must be based primarily on the following:

(i) the crime committed;

(ii) the prospects of rehabilitation of the offender;

(iii) the circumstances under which the crime was committed;

(iv) the criminal history of the offender; and

(v) consideration of alternatives to imprisonment of the offender in the state prison or a women's correctional facility.

(b) Dangerous offenders who habitually violate the law and victimize the public shall be removed from society and correctively treated in custody for long terms as needed. Other offenders shall be dealt with by probation, suspended sentence, community corrections, community service, or fine whenever such disposition appears practicable and not detrimental to the needs of public safety and the welfare of the individual. Whenever possible, sentences for offenders shall include restitution to the victim, payment of costs as provided in 46-18-232, and payment of costs of court-appointed counsel as provided in 46-8-113.

(4) It is also the policy of the state that alternatives to imprisonment, such as community corrections, should be used whenever appropriate for nonviolent felony offenders in order to provide them opportunities to gain work experience, to learn life skills, to obtain education and training, or to participate in other activities that will reduce recidivism and enable offenders to become productive members of society.

History: En. 95-2201 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2201; amd. Sec. 1, Ch. 533, L. 1983; amd. Sec. 2, Ch. 794, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (3)(a)(v) concerning sentencing alternatives; in (3)(b), near middle of first sentence after "suspended sentence", inserted "community corrections, community service"; inserted (4) concerning alternative sentencing for nonviolent felony offenders; and made minor changes in style. Amendment effective July 1, 1991.

46-18-102. Rendering judgment and pronouncing sentence. (1) The judgment shall be rendered in open court.

(2) If the verdict or finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from custody or from the obligation of his bail bond.

(3) (a) If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record his reasons for imposing the sentence.

History: En. 95-2202 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2202; amd. Sec. 1, Ch. 46, L. 1983.

46-18-103. Sentence to be imposed by judge. All sentences under this chapter shall be imposed exclusively by the judge of the court.

History: En. 95-2212 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2212.

46-18-104. Definitions. As used in 46-18-101, 46-18-104, 46-18-105, 46-18-201, and 46-18-225, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in 53-30-303.

(2) "Crime of violence" means:

(a) a crime in which an offender uses or possesses and threatens to use a deadly weapon during the commission or attempted commission of a crime;

(b) a crime in which the offender causes a serious bodily injury or death to a person other than himself; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(3) "Nonviolent felony offender" means a person who has entered a plea of guilty to a felony offense other than a crime of violence or who has been convicted of a felony offense other than a crime of violence.

History: En. Sec. 1, Ch. 794, L. 1991; amd. Sec. 7(2), Ch. 794, L. 1991.

Compiler's Comments

1991 Amendment: Section 7(2), Ch. 794, L. 1991, a coordination instruction, provided: "If this bill and House Bill No. 272 are both passed and approved, then the definition of "community corrections" or "community corrections facility or program" contained in [section 1(1) of this act] [46-18-104(1)] is amended to read: "(1) "Community corrections" or "community corrections facility or program" means a community corrections facility or program as defined in [section 3 of House Bill No. 272] [53-30-303]."" House Bill No. 272 was passed and approved as Ch. 554, L. 1991.

Effective Date: Section 8, Ch. 794, L. 1991, provided: "[This act] is effective July 1, 1991."

46-18-105. Community corrections facilities or programs. The department of corrections and human services may provide community corrections facilities or programs for the rehabilitation of nonviolent felony offenders, as authorized under Title 53, chapter 30, part 3.

History: En. Sec. 5, Ch. 794, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Effective Date: Section 8, Ch. 794, L. 1991, provided: "[This act] is effective July 1, 1991."

46-18-106 through 46-18-110 reserved.

46-18-111. Presentence investigation — when required. (1) Upon the acceptance of a plea or upon a verdict or finding of guilty to one or more felony offenses, the district court shall direct the probation officer to make a presentence investigation and report. The district court may, in its discretion, order a presentence investigation for a defendant convicted of a misdemeanor. The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified under guidelines established by the department of corrections and human services. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the department of commerce under Title 3, chapter 5, part 9.

(2) If the court finds that the record contains information sufficient to enable the meaningful exercise of discretion during sentencing, the defendant may waive a presentence investigation and report. Both the finding and the defendant's waiver must be made in open court on the record.

History: En. 95-2203 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2203; amd. Sec. 1, Ch. 173, L. 1985; amd. Sec. 2, Ch. 192, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 218, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 800 substituted present language concerning presentence investigation and allowing waiver of investigation for former text that read: "No defendant convicted of an offense under 45-5-502 through 45-5-505, 45-5-507, or 45-5-625 against a victim who was less than 16 years old when the offense was committed may be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court. The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified by professional experience. No defendant convicted of any other offense that may result in commitment for 1 year or more in the state prison may be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the court unless the court deems such report unnecessary. The court may, in its discretion, order a presentence investigation for a defendant convicted of any lesser crime or offense".

Coordination Instruction — Amendment Void: Section 2, Ch. 192, L. 1991, provided: "If Senate Bill No. 51 is passed and approved and if it includes a section amending 46-18-111, then 46-18-111 is amended by the insertion of the following language at the end of subsection (1) of 46-18-111 and [section 1 of this act] [amending 46-18-111] is void:

"The investigation must include an evaluation of the defendant and a recommendation as to treatment by a person qualified under guidelines established by the department of institutions [now department of corrections and human services]. All costs related to the evaluation must be paid by the defendant. If the defendant is determined by the court to be indigent, all costs related to the evaluation are the responsibility of the district court and must be paid by the department of commerce under Title 3, chapter 5, part 9."" Senate Bill No. 51 was approved May 23, 1991, as Ch. 800, L. 1991, and included an amendment to 46-18-111. Therefore, the amendment to 46-18-111 contained in sec. 1, Ch. 192, L. 1991, is void. Amendment contained in coordination instruction effective July 1, 1991.

46-18-112. Content of presentence investigation report. (1) Whenever an investigation is required, the probation officer shall promptly inquire into and report upon:

(a) the defendant's characteristics, circumstances, needs, and potentialities;

(b) the defendant's criminal record and social history;

(c) the circumstances of the offense;

(d) the time of the defendant's detention for the offenses charged; and

(e) except in capital cases in which the death penalty may be imposed, the harm caused, as a result of the offense, to the victim, the victim's immediate family, and the community.

(2) All local and state mental and correctional institutions, courts, and law enforcement agencies shall furnish, upon request of the officer preparing a presentence investigation, the defendant's criminal record and other relevant information.

(3) The court may, in its discretion, require that the presentence investigation report include a physical and mental examination of the defendant.

(4) If applicable, the court may require the officer to inquire into the victim's pecuniary loss and make a restitution report to the court as provided by law.

History: En. 95-2204 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2204; amd. Sec. 219, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at end, inserted "and report upon"; in (1)(d), at end, inserted "for the offense charged"; in (1)(e), at beginning, inserted exception clause and after "harm" inserted "caused, as a result of the offense"; in (2) substituted "law enforcement" for "police", after "furnish" deleted "the probation officer", and after "request" inserted "of the officer preparing a presentence investigation"; in (3), at beginning, inserted "court may, in its discretion, require that the presentence", after "investigation" inserted "report", and at end deleted "when it is desirable in the opinion of the court"; inserted (4) concerning inquiry into victim's loss and restitution report; and made minor changes in style.

46-18-113. Availability of presentence investigation report. (1) All presentence investigation reports must be a part of the court record but may not be opened for public inspection. A copy of the presentence investigation report must be provided to the prosecution, the defendant and the defendant's attorney, and the agency or institution to which the defendant is committed.

(2) The court having jurisdiction of the case may permit other access to the presentence investigation report as it considers necessary.

History: En. 95-2205 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2205; amd. Sec. 220, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Deleted former (1) that read: "(1) The judge may, in his discretion, make the investigation report or parts of it available to the defendants or others, while concealing the identity of persons who provided confidential information. If the court discloses the identity of persons who provided information, the judge may, in his discretion, allow the defendant to cross-examine those who rendered information"; in (1), before "record", inserted "court", after "record but" substituted "may not be opened for public inspection" for "shall be sealed and opened only on order of the court", and inserted last sentence concerning who is to be provided with the report; inserted (2) concerning other access to report; deleted (3) that read: "(3) If a defendant is committed to a state institution, the investigation report shall be sent to the institution at the time of commitment"; and made minor changes in style.

46-18-114 reserved.

46-18-115. Sentencing hearing. Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the applicability of sentencing enhancement provisions, mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so.

(4) The court shall impose sentence or make any other disposition authorized by law.

(5) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment.

History: En. Sec. 221, Ch. 800, L. 1991.

46-18-116. Judgment. The judgment must set forth the plea, verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. The judgment must be signed and entered on the record.

History: En. Sec. 222, Ch. 800, L. 1991.

46-18-117. Correction of sentence. The court may correct an illegal sentence or disposition at any time and may correct a sentence imposed in an illegal manner within 120 days after the sentence is imposed or after remand from an appellate court.

History: **En. Sec. 223, Ch. 800, L. 1991.**

Part 2

Form of Sentence

Part Cross-References

Excessive sanctions, cruel and unusual punishment, Art. II, sec. 22, Mont. Const.

Punishments allowed — military courts, 10-1-401.

Determination of what sentence may be imposed, 45-1-201.

Rehabilitation instead of prosecution for addicts, 45-9-202.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-201. Sentences that may be imposed. (1) Whenever a person has been found guilty of an offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence, except as provided in 61-8-714 and 61-8-722 for sentences for driving under the influence of alcohol or drugs, for a period, except as otherwise provided, not exceeding 1 year for any misdemeanor or for a period not exceeding 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not exceeding 180 days;

(iii) conditions for probation;

(iv) restitution;

(v) payment of the costs of confinement;

(vi) payment of a fine as provided in 46-18-231;

(vii) payment of costs as provided in 46-18-232 and 46-18-233;

(viii) payment of costs of court-appointed counsel as provided in 46-8-113;

(ix) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(x) community service;

(xi) home arrest as provided in Title 46, chapter 18, part 10;

(xii) any other reasonable conditions considered necessary for rehabilitation or for the protection of society; or

(xiii) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for each particular offense. The sentencing judge may impose on the defendant any reasonable restrictions or conditions during the period of suspended sentence. Reasonable restrictions or conditions may include any of those listed in subsection (1)(a).

(c) impose a fine as provided by law for the offense;

(d) require payment of costs as provided in 46-18-232 or payment of costs of court-appointed counsel as provided in 46-8-113;

(e) commit the defendant to a correctional institution, with or without a fine as provided by law for the offense;

(f) with the approval of the facility or program, order the offender to be placed in a community corrections facility or program as provided in 53-30-321;

(g) impose any combination of subsections (1)(b) through (1)(f).

(2) If a financial obligation is imposed as a condition under subsection (1)(a), sentence may be deferred for a period not exceeding 2 years for a misdemeanor or for a period not exceeding 6 years for a felony, regardless of whether any other conditions are imposed.

(3) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, the court shall consider any elapsed time and either expressly allow part or all of it as a credit against the sentence or reject all or part as a credit and state its reasons in the order. Credit, however, must be allowed for jail or home arrest time already served.

(4) Except as provided in 45-9-202 and 46-18-222, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 45-5-103, 45-5-202(3) relating to aggravated assault, 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), and 45-9-103(2).

(5) Except as provided in 46-18-222, the imposition or execution of the first 10 years of a sentence of imprisonment imposed under 45-5-102 may not be deferred or suspended.

(6) Except as provided in 46-18-222, imposition of sentence in a felony case may not be deferred in the case of a defendant who has been convicted of a felony on a prior occasion, whether or not the sentence was imposed, imposition of the sentence was deferred, or execution of the sentence was suspended.

(7) If the victim was less than 16 years old, the imposition or execution of the first 30 days of a sentence of imprisonment imposed under 45-5-503, 45-5-504, 45-5-505, or 45-5-507 may not be deferred or suspended. Section 46-18-222 does not apply to the first 30 days of the imprisonment.

(8) In imposing a sentence on a defendant convicted of a sexual offense as defined in 46-23-502, the court may not waive the registration requirement provided in 46-18-254, 46-18-255, and Title 46, chapter 23, part 5.

(9) A person convicted of a sexual offense, as defined in 46-23-502, and sentenced to imprisonment in the state prison shall enroll in the educational phase of the prison's sexual offender program.

(10) In sentencing a nonviolent felony offender, the court shall first consider alternatives to imprisonment of the offender in the state prison, including placement of the offender in a community corrections facility or program. In considering alternatives to imprisonment, the court shall examine the sentencing criteria contained in 46-18-225. If the offender is subsequently sentenced to the state prison or a women's correctional facility,

the court shall state its reasons why alternatives to imprisonment were not selected, based on the criteria contained in 46-18-225.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(1), (2), (4); amd. Sec. 21, Ch. 116, L. 1979; amd. Sec. 2, Ch. 322, L. 1979; amd. Sec. 2, Ch. 587, L. 1979; amd. Sec. 6, Ch. 198, L. 1981; amd. Sec. 1, Ch. 207, L. 1981; amd. Sec. 7, Ch. 415, L. 1981; amd. Sec. 1, Ch. 189, L. 1983; amd. Sec. 9, Ch. 581, L. 1983; amd. Sec. 1, Ch. 205, L. 1985; amd. Sec. 1, Ch. 524, L. 1985; amd. Sec. 104, Ch. 370, L. 1987; amd. Sec. 7, Ch. 610, L. 1987; amd. Sec. 1, Ch. 626, L. 1987; amd. Sec. 10, Ch. 293, L. 1989; amd. Sec. 2, Ch. 575, L. 1989; amd. Sec. 2, Ch. 42, L. 1991; amd. Sec. 10, Ch. 105, L. 1991; amd. Sec. 17, Ch. 554, L. 1991; amd. Sec. 2, Ch. 564, L. 1991; amd. Sec. 3, Ch. 794, L. 1991; amd. Sec. 5, Ch. 802, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 42 in (4) changed subsection reference to 45-9-102; and made minor change in style.

Chapter 105 in (1)(a), in first sentence before "sentences", substituted "except as provided in 61-8-714 and 61-8-722 for" for "excepting"; inserted (1)(a)(xi) providing for home arrest; at end of (1)(b) deleted reference to subsections of (1)(a); in last sentence of (3), after "jail", inserted "or home arrest"; and made minor changes in style.

Chapter 554 inserted (1)(a)(ix) and (1)(f) allowing court to place an offender in a community corrections facility or program; and in (1)(b) and (1)(g) changed subsection reference. Amendment effective July 1, 1991.

Chapter 564 in (4) inserted reference to 45-5-502(3); and in (7) deleted reference to 45-5-502(3).

Chapter 794 inserted (1)(a)(ix) concerning approval for community corrections placement; in (1)(b), at end, extended reference to subsection (1)(a)(xii); inserted (1)(f) concerning approval for community corrections placement; in (1)(g) extended reference to subsection (1)(f); and inserted (10) concerning consideration of alternative sentencing for nonviolent offenders. Amendment effective July 1, 1991. The Code Commissioner has combined the amendments inserting (1)(a)(ix) and (1)(f) made by Ch. 554 and Ch. 794 to reflect the content of both chapters.

Chapter 802 in (4) inserted reference to 45-9-202.

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

Cross-References

Determination of what sentence may be imposed, 45-1-201.

Alternative sentencing authority, 45-9-202.

Death as a sentence that may be imposed, Title 46, ch. 18, part 3.

Sentencing of persistent felony offender, 46-18-502.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-202. Additional restrictions on sentence. (1) The district court may also impose any of the following restrictions or conditions on the sentence provided for in 46-18-201 which it considers necessary to obtain the objectives of rehabilitation and the protection of society:

(a) prohibition of the defendant's holding public office;

(b) prohibition of his owning or carrying a dangerous weapon;

(c) restrictions on his freedom of association;

(d) restrictions on his freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation and the protection of society.

(2) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the supervised release program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose

the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(3) The judge in a justice's, city, or municipal court does not have the authority to restrict an individual's rights as enumerated in subsections (1) and (2).

(4) When the district court imposes a sentence of probation as defined in 46-23-1001, any probation agreement signed by the defendant may contain a clause waiving extradition.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(3); amd. Sec. 22, Ch. 116, L. 1979; amd. Sec. 10, Ch. 583, L. 1981; amd. Sec. 2, Ch. 392, L. 1987.

Cross-References

Effect of conviction — civil disabilities, 46-18-801.

Parole eligibility, 46-23-201.

Participation in furlough program, 46-23-411.

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-203. Revocation of suspended or deferred sentence. (1) Upon the filing of a petition for revocation, accompanied by an affidavit showing probable cause that the defendant has violated any condition of a sentence or any condition of a deferred imposition of sentence, the court may issue an order for a hearing on revocation. The order must require the defendant to appear at a specified time and place for the hearing and be served by delivering a copy of the petition and order to the defendant personally. The court may also issue an arrest warrant directing any peace officer or a probation officer to arrest the defendant and bring the defendant before the court.

(2) The petition for a revocation must be filed with the sentencing court during the period of suspension or deferral. Expiration of the period of suspension or deferral after the petition is filed does not deprive the court of its jurisdiction to rule on the petition.

(3) The provisions pertaining to bail, as set forth in Title 46, chapter 9, are applicable to persons arrested pursuant to this section.

(4) Without unnecessary delay, the defendant must be brought before the court, and the defendant must be advised of:

(a) the allegations of the petition;

(b) the opportunity to appear and to present evidence in the defendant's own behalf;

(c) the opportunity to question adverse witnesses; and

(d) the right to be represented by counsel at the revocation hearing pursuant to Title 46, chapter 8, part 1.

(5) A hearing is required before a suspended or deferred sentence can be revoked or the terms or conditions of the sentence can be modified, unless:

(a) the defendant admits the allegations and waives the right to a hearing; or

(b) the relief to be granted is favorable to the defendant, and the prosecutor, after having been given notice of the proposed relief and a reasonable opportunity to object, has not objected. An extension of the term of probation is not favorable to the defendant for the purposes of this subsection (b).

(6) At the hearing, the prosecution shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence. However, when a failure to pay restitution is the basis for the petition, the defendant may excuse the violation by showing sufficient evidence that the failure to pay restitution was not attributable to a failure on the defendant's part to make a good faith effort to obtain sufficient means to make the restitution payments as ordered.

(7) If the court finds that the defendant has violated the terms and conditions of the suspended or deferred sentence, the court may:

(a) continue the suspended or deferred sentence without a change in conditions;

(b) continue the suspended sentence with modified or additional terms and conditions;

(c) revoke the suspension of sentence and require the defendant to serve either the sentence imposed or any lesser sentence; or

(d) if the sentence was deferred, impose any sentence that might have been originally imposed.

(8) If the court finds that the prosecution has not proved, by a preponderance of the evidence, that there has been a violation of the terms and conditions of the suspended or deferred sentence, the petition must be dismissed and the defendant, if in custody, immediately released.

History: En. 95-2206 by Sec. 1, Ch. 196, L. 1967; rep. and re-en. by Sec. 31, Ch. 513, L. 1973; amd. Sec. 36, Ch. 184, L. 1977; amd. Sec. 1, Ch. 436, L. 1977; amd. Sec. 1, Ch. 580, L. 1977; amd. Sec. 12, Ch. 584, L. 1977; R.C.M. 1947, 95-2206(5); amd. Sec. 1, Ch. 328, L. 1981; amd. Sec. 1, Ch. 204, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 224, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services" (deleted by Ch. 800), pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 800 substituted (1) concerning petition for revocation, order for revocation, and issuance of warrant for former text that read: "A judge, magistrate, or justice of the peace who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under 46-18-201 or his successor is authorized in his discretion to revoke the suspension or impose sentence and order the person committed. He may also, in his discretion, order the prisoner placed under the jurisdiction of the department of institutions as provided by law or retain such jurisdiction with his court"; in (2), after "revocation", deleted "of a suspended sentence or imposition of a sentence previously deferred"; deleted former (3) that read: "(3) Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing"; inserted (3) concerning applicability of bail provisions; inserted (4) concerning advising defendant of certain rights; inserted (5) concerning when hearing is not required; inserted (6) requiring proof of terms and conditions of suspended or deferred sentence other than failure to pay restitution; inserted (7) concerning authority of court; inserted (8) concerning release of defendant; and made minor changes in style.

46-18-204. Dismissal after deferred imposition. Whenever the court has deferred the imposition of sentence and after termination of the time period during which imposition of sentence has been deferred, upon motion of the court, the defendant, or the defendant's attorney, the court may allow the defendant to withdraw his plea of guilty or may strike the verdict of guilty from the record and order that the charge or charges against him be dismissed. A copy of the order of dismissal must be sent to the prosecutor and the department of justice, accompanied by a form prepared by the department of justice and containing identifying information about the defendant. After the charge is dismissed, all records and data relating to the charge are confidential criminal justice information, as defined in 44-5-103, and public access to the information may only be obtained by district court order upon good cause shown.

History: **En. 95-2207 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2207; amd. Sec. 1, Ch. 147, L. 1987; amd. Sec. 1, Ch. 463, L. 1989.**

46-18-205 through 46-18-210 reserved.

46-18-211. When no place of imprisonment is specified. When a statute authorizes imprisonment for its violation but does not prescribe the place of imprisonment, a sentence not to exceed 1 year shall be to the county jail.

History: **En. 95-2206.2 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.2.**

46-18-212. When no penalty is specified. The court, in imposing sentence upon an offender convicted of an offense for which no penalty is otherwise provided or if the offense is designated a misdemeanor and no penalty is otherwise provided, may sentence the offender to a term of imprisonment not to exceed 6 months in the county jail or a fine not to exceed $500, or both.

History: **En. 95-2206.3 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.3(part).**

Cross-References

Classification of offenses, 45-1-201.
Definition of misdemeanor, 45-2-101.
Violation of Montana Elder Abuse Prevention Act misdemeanor, 52-3-825.

46-18-213. When no penalty is specified — felony. The court, in imposing sentence upon an offender convicted of an offense which is designated as a felony and no penalty is otherwise provided, may sentence the offender for any term not to exceed 10 years in the state prison or may fine the offender in an amount not to exceed $50,000 or may impose both such fine and imprisonment.

History: **En. 95-2206.4 by Sec. 31, Ch. 513, L. 1973; R.C.M. 1947, 95-2206.4; amd. Sec. 7, Ch. 198, L. 1981.**

Cross-References

Classification of offenses, 45-1-201.
Definition of felony, 45-2-101.

46-18-214 through 46-18-219 reserved.

46-18-220. Sentences for certain offenses committed in state prison — death penalty. A person serving a sentence of imprisonment in the state prison convicted of the offense of attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison shall be sentenced to death or life imprisonment as provided in 46-18-301 through 46-18-310.

History: **En. Sec. 1, Ch. 696, L. 1985.**

46-18-221. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 46-18-222.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 46-18-222. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 45-8-332(1), or other dangerous weapon.

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 46-18-222.

(4) An additional sentence prescribed by this section shall run consecutively to the sentence provided for the offense.

History: En. 95-2206.17 by Sec. 13, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.17; amd. Sec. 1, Ch. 108, L. 1981.

Cross-References

Sentencing of persistent felony offender, 46-18-502.

46-18-222. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by subsections (4), (5), and (6) of 46-18-201, 46-18-221(3), 46-18-224, and 46-18-502(3) do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution. However, a voluntarily induced intoxicated or drugged condition may not be considered an impairment for the purposes of this subsection.

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor;

(5) where applicable, no serious bodily injury was inflicted on the victim unless a weapon was used in the commission of the offense; or

(6) the offense was committed under 45-5-502(3) and the court determines that treatment of the defendant in a local community affords a better opportunity for rehabilitation of the defendant and for the ultimate protection of society, in which case the court shall include in its judgment a statement of the reasons for its determination.

History: En. 95-2206.18 by Sec. 14, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.18; amd. Sec. 3, Ch. 322, L. 1979; amd. Sec. 1, Ch. 396, L. 1979; amd. Sec. 2, Ch. 207, L. 1981; amd. Sec. 2, Ch. 327, L. 1981; amd. Sec. 2, Ch. 392, L. 1983; amd. Sec. 1, Ch. 532, L. 1983; amd. Sec. 105, Ch. 370, L. 1987; amd. Sec. 3, Ch. 564, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (6) providing an exception from the mandatory minimum sentence and allowing deferral or suspension of mandatory sentence of imprisonment for sexual assault involving a person under age 16 if the court concludes treatment in local community is better for rehabilitation of defendant and protection of society; and made minor changes in style.

Cross-References

Deliberate homicide, 45-5-102.

Mitigated deliberate homicide, 45-5-103.

Aggravated assault, 45-5-202.

Kidnapping, 45-5-302.

Aggravated kidnapping, 45-5-303.

Robbery, 45-5-401.

Sexual intercourse without consent, 45-5-503.

Criminal sale of dangerous drugs, 45-9-101.

Criminal possession of dangerous drugs, 45-9-102.

Criminal possession with intent to sell, 45-9-103.

Sentencing of persistent felony offender, 46-18-502.

46-18-223. Hearing to determine application of exceptions. (1) When the application of an exception provided for in 46-18-222 is an issue, the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

History: En. 95-2206.19 by Sec. 15, Ch. 584, L. 1977; R.C.M. 1947, 95-2206.19.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel, 46-8-101.

Court to advise defendant of rights, 46-12-210.

Right to counsel — parole hearing, 46-23-204.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-18-224. Additional sentence for offense committed while carrying a handgun loaded with armor-piercing ammunition. (1) A person who has been found guilty of an offense in which bodily injury occurred or was attempted or threatened and who knowingly used or carried a handgun loaded with armor-piercing ammunition during the commission of the offense must, in addition to the sentence for the offense, be sentenced to a term of imprisonment in the state prison of not less than 5 years or more than 25 years, except as provided in 46-18-222.

(2) An additional sentence prescribed by this section must run consecutively to the sentence provided for the offense, and except as provided in 46-18-222, the sentence may not be suspended and imposition of it may not be deferred.

(3) For purposes of this section:

(a) "handgun" means any firearm, including a pistol or revolver, originally designed to be fired by the use of a single hand; and

(b) "armor-piercing ammunition" means ammunition which, if fired from a handgun under the test procedure of the national institute of law enforcement and criminal justice standard for the ballistics resistance of police body armor promulgated December 1978, is capable of penetrating bullet-resistant apparel or body armor meeting the requirements of Type IIA of Standard NILECJ-STD-0101.01 as formulated by the United States department of justice and published in December 1978.

History: En. Sec. 1, Ch. 392, L. 1983.

46-18-225. Criteria for sentencing nonviolent felony offenders. Prior to sentencing a nonviolent felony offender to a term of imprisonment in the state prison or a women's correctional facility, the court shall take into account whether:

(1) the interests of justice and the needs of public safety truly require the level of security provided by imprisonment of the offender in the state prison or a women's correctional facility;

(2) the needs of the offender can be better served in the community or in a facility or program other than the state prison or a women's correctional facility;

(3) there are substantial grounds tending to excuse or justify the offense, though failing to establish a defense;

(4) the offender acted under strong provocation;

(5) the offender has made restitution or will make restitution to the victim of his criminal conduct;

(6) the offender has no prior history of conviction for a criminal act or has led a law-abiding life for a substantial period of time before the commission of the present crime;

(7) the offender's criminal conduct was the result of circumstances that are unlikely to recur;

(8) the character and attitude of the offender indicate that he is likely to commit another crime;

(9) the offender is likely to respond quickly to correctional or rehabilitative treatment; and

(10) imprisonment of the offender would create an excessive hardship on the offender or his family.

History: En. Sec. 4, Ch. 794, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 794, L. 1991, provided: "[This act] is effective July 1, 1991."

46-18-226 through 46-18-230 reserved.

46-18-231. Fines in felony and misdemeanor cases. (1) Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) Any fine levied under this section in a felony case shall be in an amount fixed by the court not to exceed $50,000.

History: En. Sec. 1, Ch. 198, L. 1981; amd. Sec. 106, Ch. 370, L. 1987; amd. Sec. 8, Ch. 610, L. 1987; amd. Sec. 3, Ch. 575, L. 1989; amd. Sec. 3, Ch. 42, L. 1991; amd. Sec. 2, Ch. 519, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 42 in (1) changed subsection reference to 45-9-102.

Chapter 519 near end of (1) inserted "45-9-109"; and made minor changes in style.

46-18-232. Payment of costs by defendant. (1) A court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in 25-10-201, plus costs of jury service as a part of his sentence. Such costs shall be limited to expenses specifically incurred by the prosecution in connection with the proceedings against the defendant.

(2) The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs and who is not in default in the payment thereof may at any time petition the court that sentenced him for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or his immediate

family, the court may remit all or part of the amount due in costs or modify the method of payment.

History: En. Sec. 2, Ch. 198, L. 1981.

46-18-233. Fine or costs as a condition on suspended or deferred sentence. (1) Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232 and the imposition or execution of the rest of his sentence is deferred or suspended, the court may make payment of the fine or costs a condition for probation.

(2) A suspended or deferred sentence may not be revoked if the defendant defaults on the payment of the fine and the default is not attributable to an intentional refusal to obey the order of the court or a failure to make a good faith effort to make the payment.

History: En. Sec. 3, Ch. 198, L. 1981.

46-18-234. When payment of fine or costs due. Whenever a defendant is sentenced to pay a fine or costs under 46-18-231 or 46-18-232, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence, the payment is due immediately.

History: En. Sec. 4, Ch. 198, L. 1981.

46-18-235. Disposition of money collected as fines and costs. The money collected by a court as a result of the imposition of fines or assessment of costs under the provisions of 46-18-231 and 46-18-232 shall be paid:

(1) by a district court to the county general fund of the county in which the court is held, except that:

(a) if the costs assessed include any district court expense listed in 3-5-901, the money collected from assessment of these costs must be paid to the state for deposit into the state general fund to the extent the expenses were paid by the state;

(b) if the fine was imposed for a violation of Title 45, chapter 9 or 10, the court may order the money paid into the drug forfeiture account maintained under 44-12-206 for the law enforcement agency which made the arrest from which the conviction and fine arose; and

(c) if the fine was imposed for a violation of 45-5-206, 50% of the amount collected must be deposited in the state special revenue fund for use of the department of family services in the battered spouses and domestic violence grant program created by 52-6-101; and

(2) by a justice's court pursuant to 3-10-601.

History: En. Sec. 5, Ch. 198, L. 1981; amd. Sec. 6, Ch. 180, L. 1983; amd. Sec. 16, Ch. 680, L. 1985; amd. Sec. 10, Ch. 1, Sp. L. 1985; amd. Sec. 1, Ch. 553, L. 1987; amd. Sec. 30, Ch. 557, L. 1987; amd. Sec. 59, Ch. 83, L. 1989; amd. Sec. 2, Ch. 296, L. 1991; amd. Sec. 9, Ch. 704, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 296 near beginning of first sentence, after "court", deleted "except money collected by a justice's court"; at beginning of (1) inserted "by a district court"; in (1)(b), after "chapter 9", inserted "or 10"; in (1)(c), after "collected", deleted "except for fines collected by a justice court and distributed pursuant to 3-10-601"; and inserted (2) concerning payment by a Justice's Court.

Chapter 704 near middle of (1)(a) substituted "state" for "department of commerce". Amendment effective July 1, 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

46-18-236. Imposition of charge upon conviction or forfeiture — administration. (1) Except as provided in subsection (2), there must be imposed by all courts of original jurisdiction on a defendant upon his conviction for any conduct made criminal by state statute or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines, as follows:

(a) $15 for each misdemeanor charge; and

(b) the greater of $20 or 10% of the fine levied for each felony charge.

(2) If a convicting court determines under 46-18-231 and 46-18-232 that the defendant is not able to pay the fine and costs or that he is unable to pay within a reasonable time, the court must waive payment of the charge imposed by this section.

(3) The charge imposed by this section is not a fine and must be imposed in addition to any fine and may not be used in determining the jurisdiction of any court.

(4) When the payment of a fine is to be made in installments over a period of time, the charge imposed by this section must be collected from the first payment made and each subsequent payment as necessary if the first payment is not sufficient to cover the charge.

(5) The charges collected under subsection (1), except those collected by a justice's court, must be deposited with the appropriate local government finance officer or treasurer. If a city municipal court or city or town court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the city or town finance officer or treasurer. If a district court is the court of original jurisdiction, the charges collected under subsection (1) must be deposited with the county finance officer or treasurer. If the court of original jurisdiction is a court within a consolidated city-county government within the meaning of Title 7, chapter 3, the charges collected under subsection (1) must be deposited with the finance officer or treasurer of the consolidated government.

(6) (a) A city or town finance officer or treasurer may retain the charges collected under subsection (1) by a city municipal court or a city or town court and may use that money for the payment of salaries of the city or town attorney and his deputies.

(b) Each county finance officer or treasurer may retain the charges collected under subsection (1) by district courts for crimes committed or alleged to have been committed within that county. The county finance officer or treasurer shall use the money for the payment of salaries of its deputy county attorneys and for the payment of other salaries in the office of the county attorney, and any funds not needed for such salaries may be used for the payment of any other county salaries.

History: En. Sec. 1, Ch. 719, L. 1985; amd. Sec. 3, Ch. 17, Sp. L. June 1986; amd. Sec. 31, Ch. 557, L. 1987; amd. Sec. 4, Ch. 667, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a) increased charge for misdemeanor from $10 to $15. Amendment effective July 1, 1991.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Payment of salaries of county officials and assistants, 7-4-2502.

Salary schedule for certain county officers, 7-4-2503.

Amount of compensation for deputies and assistants, 7-4-2505.

Office of city attorney, Title 7, ch. 4, part 46.

46-18-237 through 46-18-240 reserved.

46-18-241. Condition of restitution. (1) As provided in 46-18-201, a sentencing court may require an offender to make restitution to any victim of the offense.

(2) The court may require the offender to pay the cost of supervising the payment of restitution as provided in 46-18-245 by paying an amount equal to 10% of the amount of restitution ordered, but not less than $5 or more than $250. Payment must be made to the court, which shall disburse the money to the entity employing the person ordered to supervise restitution under 46-18-245.

History: En. Sec. 1, Ch. 426, L. 1983; amd. Sec. 1, Ch. 490, L. 1989.

Cross-References

Treatment of victims and witnesses, Title 46, ch. 24.

46-18-242. Investigation and report of victim's loss. (1) Whenever the court believes that restitution may be a proper condition of a deferred or suspended sentence or the prosecuting attorney requests, the court shall order the probation officer, restitution officer, or other designated person to include in the presentence investigation and report:

(a) documentation of the offender's financial resources and future ability to pay restitution; and

(b) documentation of the victim's pecuniary loss, submitted by the victim.

(2) Where no presentence report is authorized or requested, the court may receive evidence of the offender's ability to pay and the victim's loss at the time of sentencing.

History: En. Sec. 2, Ch. 426, L. 1983.

46-18-243. Definition. For purposes of 46-18-241 through 46-18-249, the following definitions apply:

(1) "Pecuniary loss" means:

(a) all special damages, but not general damages, substantiated by evidence in the record, that a person could recover against the offender in a civil action arising out of the facts or events constituting the offender's criminal activities, including without limitation the money equivalent of loss resulting from property taken, destroyed, broken, or otherwise harmed and out-of-pocket losses, such as medical expenses; and

(b) reasonable out-of-pocket expenses incurred by the victim in filing charges or in cooperating in the investigation and prosecution of the offense.

(2) "Victim" means:

(a) a person who suffers loss of property, bodily injury, or death as a result of:

(i) criminally injurious conduct; or

(ii) his good faith effort to prevent criminally injurious conduct;

(b) an insurer or surety with a right of subrogation to the extent it has reimbursed the victim of the offense for his pecuniary loss.

History: En. Sec. 3, Ch. 426, L. 1983.

46-18-244. Type and time of payment — defenses. (1) The court shall specify the amount, method, and time of payment to the victim and may permit payment in installments. The court may not establish a payment schedule extending beyond the period for which the sentence has been suspended or deferred under 46-18-201.

(2) In determining the amount, method, and time of payment, the court shall consider the financial resources and future ability of the offender to pay. The court may provide for payment to a victim up to but not in excess of the pecuniary loss caused by the offense. The offender may assert any defense that he could raise in a civil action for the loss sought to be compensated by the restitution order.

History: En. Sec. 4, Ch. 426, L. 1983.

46-18-245. Supervision of payment. The court may order a probation officer, restitution officer, or other designated person to supervise the making of restitution and to report to the court any default in payment.

History: En. Sec. 5, Ch. 426, L. 1983.

46-18-246. Waiver or modification of payment. An offender may at any time petition the sentencing court to adjust or otherwise waive payment of any part of any ordered restitution. The court shall schedule a hearing and give a victim to whom restitution was ordered notice of the hearing date, place, and time and inform the victim that he will have an opportunity to be heard. If the court finds that the circumstances upon which it based the imposition, amount, method, or time of payment no longer exist or that it otherwise would be unjust to require payment as imposed, the court may adjust or waive unpaid restitution or modify the time or method of making restitution. The court may extend the restitution schedule, but not beyond the period for which the sentence has been suspended or deferred under 46-18-201.

History: En. Sec. 6, Ch. 426, L. 1983.

46-18-247. Default. (1) If an offender sentenced to make restitution is in default, the sentencing court, upon the motion of the prosecuting attorney or upon its own motion, may issue an order under 46-18-203 requiring the offender to show cause why he should not be confined for failure to obey the sentence of the court. The court may order the offender to appear at a time, date, and place for a hearing or, if he fails to appear as ordered, issue a warrant for his arrest. The order or warrant must be accompanied by written notice of the offender's right to a hearing as provided in 46-18-203.

(2) If the court finds that the offender's default was attributable to a failure on his part to make a good faith effort to obtain the necessary funds for payment of the ordered restitution, the court may take any action provided

for in 46-18-203. If confinement is ordered, the court, after entering the order, may at any time, for good cause shown, reduce the term of confinement and waive satisfaction of the restitution order.

(3) An order to pay restitution constitutes a judgment rendered in favor of the state, and following a default in the payment of restitution or any installment thereof, the sentencing court may order the restitution to be collected by any method authorized for the enforcement of other judgments.

History: En. Sec. 7, Ch. 426, L. 1983.

46-18-248. Rights of crime victims' compensation account. (1) Whenever a victim is paid from the crime victims' compensation account established in 53-9-109 for loss arising out of a criminal act, the account is subrogated, to the extent of the account's payment to the victim, to the rights of the victim to any restitution ordered by the court.

(2) The rights of the crime victims' compensation account are subordinate to the claims of multiple victims who have suffered loss arising out of multiple offenses by the same offender or arising from any transaction which is part of the same continuous scheme of criminal activity of an offender.

History: En. Sec. 8, Ch. 426, L. 1983.

46-18-249. Civil actions by victim. (1) Sections 46-18-241 through 46-18-249 do not limit or impair the right of a victim to sue and recover damages from the offender in a civil action.

(2) The findings in the sentencing hearing and the fact that restitution was required or paid are not admissible as evidence in a civil action and have no legal effect on the merits of a civil action.

(3) Any restitution paid by the offender to the victim must be set off against any pecuniary loss awarded to the victim in a civil action arising out of the facts or events which were the basis for the restitution. The court trying the civil action shall determine the amount of any setoff asserted by the defendant under this section.

History: En. Sec. 9, Ch. 426, L. 1983.

46-18-250. Victim's location unknown — payments to restitution fund — use of restitution fund. (1) If the location of a victim on whose behalf restitution is being paid is unknown, the court may order that restitution payments made on that victim's behalf be deposited in a fund known as the county restitution fund. Subject to the availability of money in the fund, if the whereabouts of a victim whose restitution payments were deposited in the county restitution fund become known, the county shall refund to the victim payments that were deposited in the fund.

(2) Money in the restitution fund may be used to provide payments on behalf of offenders who are ordered to pay restitution but, due to circumstances beyond their control, are unable to obtain employment or are unable to obtain employment sufficient to make restitution payments and sustain themselves and their dependents. The offender may perform community service, and for each hour of community service performed, the victim shall receive an amount equal to the minimum hourly wage from the county restitution fund. A judge may order an offender to perform community service work for restitution payments upon a finding that the offender would not

otherwise be able to make restitution payments and that there are funds available in the county restitution fund for payments to the victim.

(3) Moneys in the county restitution fund that are due to a victim under this part must be paid to the crime victims compensation account, as defined in 53-9-109, if payments have been made to or on behalf of the victim from the account. Payment from the county restitution fund to the crime victims compensation account may be made only from moneys paid by the offender who caused the injury or death that resulted in the payment from the account.

History: En. Sec. 1, Ch. 545, L. 1989.

46-18-251 through 46-18-253 reserved.

46-18-254. Release of sexual offender — duties of court and department. A sexual offender must be informed in writing at the time of sentencing of his duty to register under 46-18-255; Title 46, chapter 23, part 5; and this section by the court in which he is sentenced. The department shall obtain the address where the person expects to reside upon release or discharge or suspension of his sentence. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

History: En. Sec. 3, Ch. 293, L. 1989.

Cross-References

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-255. Sentence upon conviction — restriction on employment. A judge sentencing a person upon conviction of a sexual offense shall, as a condition to probation, parole, or deferment or suspension of sentence, impose upon the defendant reasonable employment or occupational prohibitions and restrictions designed to protect the class or classes of persons containing the likely victims of further offenses by the defendant.

History: En. Sec. 9, Ch. 293, L. 1989.

Cross-References

Registration of sexual offenders, Title 46, ch. 23, part 5.

46-18-256. Sexually transmitted disease testing — test procedure. (1) A person convicted of a sexual offense, as defined in 46-23-502, may, following entry of judgment, be administered a standard test to determine whether the person suffers from a sexually transmitted disease, as defined in 50-18-101.

(2) Arrangements for the test required by subsection (1) must be made by the county attorney of the county in which the person was convicted. The test must be conducted by a health care provider, as defined in 50-16-504.

(3) The county attorney of the county in which the person was convicted shall release the information concerning the test results to:

(a) the convicted person; and

(b) the victim of the offense committed by the convicted person or to the parent or guardian of the victim if the victim is a minor.

(4) The provisions of the AIDS Prevention Act do not apply to this section.

History: En. Sec. 1, Ch. 504, L. 1991.

Compiler's Comments

Retroactive Applicability: Section 2, Ch. 504, L. 1991, provided: "[Section 1] [46-18-256] applies retroactively, within the meaning of 1-2-109, to persons convicted prior to [the effective date of this act] [April 20, 1991] who are, at the time a test is sought, in jail, prison, or other incarceration; on probation or parole; or otherwise still under state supervision for a sexual offense defined in 46-23-502."

Effective Date: Section 3, Ch. 504, L. 1991, provided that this section is effective on passage and approval. Approved April 20, 1991.

46-18-257 through 46-18-260 reserved.

46-18-261. Recovery of suppression and investigation expenses for fires caused by arson. (1) A person convicted of arson, negligent arson, or solicitation of or conspiracy to commit arson or negligent arson may be ordered, as part of the sentence, to reimburse law enforcement and firefighting agencies for the cost of suppressing and investigating a fire that occurred during the commission of the crime.

(2) The court may order a person doing a presentence investigation and report to include documentation of the costs of suppressing and investigating the fire and of the defendant's ability to pay and may receive evidence concerning the matters at the time of sentencing.

(3) The court shall specify the amount, method, and time of payment, which may include but is not limited to installment payments. The court may order a probation officer or other appropriate officer attached to or working closely with the court in the administration of justice to supervise payment and report any default to the court.

(4) Upon petition by the offender and after a hearing, the payment may be modified. Agencies receiving payment at that time must be notified of and allowed to participate in the hearing.

(5) This section does not limit the right of a law enforcement or firefighting agency to recover from the offender in a civil action, but the findings in the sentencing hearing and the fact that payment of costs was part of the sentence are inadmissible in and have no legal effect on the merits of a civil action. Costs paid by the offender must be deducted from a recovery awarded in a civil action.

History: En. Sec. 1, Ch. 447, L. 1989.

Part 3

Death Penalty

46-18-301. Hearing on imposition of death penalty. When a defendant is found guilty of or pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in

46-18-303 and 46-18-304 for the purpose of determining the sentence to be imposed. The hearing shall be conducted before the court alone.

History: **En. 95-2206.6 by Sec. 1, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.6.**

Cross-References

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

46-18-302. Evidence that may be received. In the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, and mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any evidence the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to such aggravating or mitigating circumstances shall be considered without reintroducing it at the sentencing proceeding. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

History: **En. 95-2206.7 by Sec. 2, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.7.**

46-18-303. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 45-5-102, and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnapping which resulted in the death of the victim or the death by direct action of the defendant of a person who rescued or attempted to rescue the victim.

(8) The offense was attempted deliberate homicide, aggravated assault, or aggravated kidnapping committed while incarcerated at the state prison by a person who has been previously:

(a) convicted of the offense of deliberate homicide; or

(b) found to be a persistent felony offender pursuant to part 5 of this chapter and one of the convictions was for an offense against the person in violation of Title 45, chapter 5, for which the minimum prison term is not less than 2 years.

(9) The offense was deliberate homicide and was committed by a person during the course of committing sexual assault, sexual intercourse without consent, deviate sexual conduct, or incest, and the victim was less than 18 years of age.

History: En. 95-2206.8 by Sec. 3, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.8; amd. Sec. 2, Ch. 696, L. 1985; amd. Sec. 1, Ch. 387, L. 1987; amd. Sec. 1, Ch. 81, L. 1989.

Cross-References

Sentences for certain offenses committed in state prison, 46-18-220.

46-18-304. Mitigating circumstances. Mitigating circumstances are any of the following:

(1) The defendant has no significant history of prior criminal activity.

(2) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(3) The defendant acted under extreme duress or under the substantial domination of another person.

(4) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(5) The victim was a participant in the defendant's conduct or consented to the act.

(6) The defendant was an accomplice in an offense committed by another person, and his participation was relatively minor.

(7) The defendant, at the time of the commission of the crime, was less than 18 years of age.

(8) Any other fact that exists in mitigation of the penalty.

History: En. 95-2206.9 by Sec. 4, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.9.

46-18-305. Effect of aggravating and mitigating circumstances. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 46-18-303 and 46-18-304 and shall impose a sentence of death if it finds one or more of the aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 46-18-303 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.

History: En. 95-2206.10 by Sec. 5, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.10.

46-18-306. Specific written findings of fact. In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact as to the existence or nonexistence of each of the circumstances set forth in 46-18-303 and 46-18-304. The written findings of fact shall be substantiated by the records of the trial and the sentencing proceeding.

History: En. 95-2206.11 by Sec. 6, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.11.

46-18-307. Automatic review of sentence. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana as provided for in 46-18-308 through 46-18-310.

History: En. 95-2206.12 by Sec. 7, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.12.

46-18-308. Time for review — consolidation with appeal. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana within 60 days after certification by the sentencing court of the entire record unless the time is extended by the supreme court for good cause shown. The review by the supreme court has priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration.

History: En. 95-2206.13 by Sec. 8, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.13.

46-18-309. Transmission of transcript and record of trial. The clerk of the trial court, within 10 days after receiving the transcript, shall transmit the entire record and transcript to the supreme court.

History: En. 95-2206.14 by Sec. 9, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.14.

46-18-310. Supreme court's determination as to the sentence. The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

(1) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(2) whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 46-18-303 and 46-18-304; and

(3) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The court shall include in its decision a reference to those similar cases it took into consideration.

History: En. 95-2206.15 by Sec. 10, Ch. 338, L. 1977; R.C.M. 1947, 95-2206.15.

Cross-References

Deliberate homicide, 45-5-102.

Aggravated kidnapping, 45-5-303.

Part 4

Factors That Reduce Sentence

46-18-401. Consecutive sentences. (1) Unless the judge otherwise orders:

(a) whenever a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term may not be merged in the other term; and

(b) whenever a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence or probation may not be merged in any new sentence of commitment or probation.

(2) The court, whether or not it merges the sentences, shall immediately furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which must cite any sentence that is merged.

(3) If an unexpired sentence is merged pursuant to subsection (1), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(4) Separate sentences for two or more offenses must run consecutively unless the court otherwise orders.

(5) Except as provided in this subsection, whenever a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the supervised release program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under chapter 23, part 2, of this title in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole.

History: En. 95-2213 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 2, Ch. 340, L. 1977; R.C.M. 1947, 95-2213; amd. Sec. 23, Ch. 116, L. 1979; amd. Sec. 11, Ch. 583, L. 1981; amd. Sec. 1, Ch. 76, L. 1989.

Cross-References

Service of term for additional crime, 46-23-217.

46-18-402. Credit for time served. Where defendant has served any portion of his sentence under a commitment based upon a judgment which is subsequently declared invalid or which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts. In calculating the time imprisoned, the person so convicted shall have the credit for all the time earned in diminution of sentence as provided under 53-30-105, unless the sentencing authority, in its discretion, may choose to deny such credit.

History: En. 95-2214 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2214.

46-18-403. Credit for incarceration prior to conviction. (1) Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered shall be allowed credit for each day of incarceration prior to or after conviction, except that in no case shall the time allowed as a credit exceed the term of the prison sentence rendered.

(2) Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction of the offense shall be allowed a credit of $25 for each day incarcerated prior to conviction, except that in no case shall the amount allowed or credited exceed the amount of the fine.

History: En. 95-2215 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2215; amd. Sec. 2, Ch. 270, L. 1989.

46-18-404. Designation as nondangerous offender for purposes of parole eligibility. (1) Except as provided in subsection (4), the sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under part 2 of chapter 23 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; and

(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for the offense has been set aside in a postconviction hearing.

(3) If the court determines that an offender is a dangerous offender, it shall make that determination a part of the sentence imposed and shall state the determination in the judgment. Except as provided in subsection (4), if the sentence and judgment do not contain a determination that the offender is a dangerous offender, the offender is considered to have been designated as a nondangerous offender for purposes of eligibility for parole.

(4) If an offender is given a probationary sentence that is subsequently revoked, the court may make the determination of whether the offender is a dangerous or nondangerous offender at the time of the revocation proceeding.

History: En. 95-2206.16 by Sec. 1, Ch. 340, L. 1977; R.C.M. 1947, 95-2206.16; amd. Sec. 1, Ch. 426, L. 1979; amd. Sec. 1, Ch. 106, L. 1989.

Cross-References

Prisoners eligible for parole, 46-23-201.

Duration of parole for nondangerous offender, 46-23-216.

Part 5

Persistent Felony Offenders

46-18-501. Definition of persistent felony offender. A "persistent felony offender" is an offender who has previously been convicted of a felony and who is presently being sentenced for a second felony committed on a different occasion than the first. An offender is considered to have been previously convicted of a felony if:

(1) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(2) less than 5 years have elapsed between the commission of the present offense and either:

(a) the previous felony conviction; or

(b) the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(3) the offender has not been pardoned on the ground of innocence and the conviction has not been set aside in a postconviction hearing.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(1).

46-18-502. Sentencing of persistent felony offender. (1) Except as provided in subsection (2), a persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both, if he was 21 years of age or older at the time of the commission of the present offense.

(2) If the offender was a persistent felony offender, as defined in 46-18-501, at the time of his previous felony conviction, less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the offender's release on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction, and he was 21 years of age or older at the time of the commission of the present offense, he shall be imprisoned in the state prison for a term of not less than 10 years or more than 100 years or shall be fined an amount not to exceed $50,000, or both.

(3) Except as provided in 46-18-222, the imposition or execution of the first 5 years of a sentence imposed under subsection (1) or the first 10 years of a sentence imposed under subsection (2) may not be deferred or suspended.

(4) Any sentence imposed under subsection (2) shall run consecutive to any other sentence imposed.

History: En. 95-1507 by Sec. 5, Ch. 513, L. 1973; amd. Sec. 21, Ch. 184, L. 1977; amd. Sec. 11, Ch. 584, L. 1977; R.C.M. 1947, 95-1507(2), (3); amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 327, L. 1981.

Cross-References

Prohibition on deferral of imposition of sentence, 46-18-201(5).

Additional sentence for offenses committed with a dangerous weapon, 46-18-221.

46-18-503. Renumbered 46-13-108 by Code Commissioner, 1991.

Part 6

Procedure After Sentencing

Part Cross-References

Disposition of fine or forfeited bond — nonsupport, 45-5-621.

Disposition of fine or forfeited bond — endangering welfare of children, 45-5-622.

46-18-601. Judgment in writing — lien. (1) The judgment shall be reduced to writing and signed by the judge.

(2) A judgment that the defendant pay a fine or costs constitutes a lien upon the real estate of the defendant, which lien dates from the date of the defendant's arrest.

History: En. 95-2208 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2208.

46-18-602. Repealed. Sec. 6, Ch. 104, L. 1981.

History: En. 95-2209 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2209.

46-18-603. Disposition of fines and forfeitures. All fines and forfeitures collected in any court except city courts must be applied to the payment of the costs of the case in which the fine is imposed or the forfeiture incurred. After such costs are paid, the residue, if not paid to a justice's court or otherwise provided by law, must be paid to the county treasurer of the county in which the court is held and by him credited as provided by law. If the fine or forfeiture is paid to the county treasurer, at the time of such payment there shall be filed with the county treasurer a complete statement showing the total of the fine or forfeiture received or incurred with an itemized statement of the costs incurred by the county in such action. The statement shall give the title of the cause and be subscribed by the person or officer making such payment.

History: En. 95-2228 by Sec. 10, Ch. 513, L. 1973; R.C.M. 1947, 95-2228; amd. Sec. 32, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Disposition of fine or forfeited bond — nonsupport, 45-5-621.

Disposition of fine or forfeited bond — endangering welfare of children, 45-5-622.

46-18-604. Transmittal of sentencing data to supreme court — compilation. (1) Except as provided in subsection (2), the clerk of district court shall record on forms provided by the clerk of the supreme court the following sentencing data for each defendant sentenced:

(a) the name of the case;

(b) whether the conviction was by verdict or plea;

(c) the fine or imprisonment, or both, allowed by law;

(d) the actual fine or imprisonment, or both, imposed;

(e) the percentage of fine or imprisonment, or both, allowed by law that is actually imposed;

(f) the amount of fine or number of years of imprisonment, or both, that are suspended; and

(g) the percentage of fine or imprisonment, or both, imposed that is suspended.

(2) Whenever a sentence of death or of life imprisonment is allowed by law, this fact must be shown in the report, together with the case name and the actual sentence imposed.

(3) The clerk of district court shall report the names of the cases in which sentencing was deferred.

(4) The clerk of district court shall report the reasons given by the judge for the disposition of every case by attaching an extract of that portion of the judgment setting forth the basis for the sentence.

(5) The sentencing judge shall sign the form containing the information recorded by the clerk of district court pursuant to this section.

(6) The clerk of district court shall on a quarterly basis total for each judge the data recorded pursuant to subsections (1) and (2), sign the report, and forward all such data to the clerk of the supreme court.

(7) The clerk of the supreme court shall compile the reports submitted by the district court clerks and distribute the data to all district court clerks and any interested party on April 1 of each year.

(8) The clerk of the supreme court shall provide a form for the recording of data required by this section.

History: En. Sec. 1, Ch. 459, L. 1981.

Part 7

Jail Work Release Program

Part Cross-References

County jail work programs, 7-32-2225 through 7-32-2227.

46-18-701. Parole during employment hours. (1) A court, after having sentenced a person to confinement in a county jail, may, in its discretion, upon request of the county attorney and sheriff of such county and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement with parole during the hours or periods the convicted person is actually employed.

(2) Upon the issuance of such an order under this part, the sheriff shall arrange for the convicted person to continue his regular employment without interruption insofar as is reasonably possible. However, said prisoner shall be confined in the county jail during the hours when he is not employed.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(a), (b).

46-18-702. Disposition of prisoner's earnings. The earnings of the prisoner shall be collected by the sheriff. From such earnings the sheriff shall pay the prisoner's board and personal expenses both inside and outside the jail and, to the extent directed by the court, pay the support of his dependents, if any. Any balance shall be retained until his discharge.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(c).

46-18-703. Transfer to another county. The court may by order authorize the sheriff of the sentencing county to arrange with a sheriff of any other county within the state of Montana to have the convicted person transferred to the other county where it appears the convicted person can continue his regular employment in the latter county. When such transfer has been made to another county, the sheriff of the sentencing county shall still collect all moneys earned by the convicted person and shall dispose of said moneys as provided by 46-18-702.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(f).

46-18-704. Reduction of sentence. The committing court may, in its discretion, upon request of the county attorney and sheriff of such county, reduce the sentence of the prisoner up to one-fourth of the full term if, in the opinion of the court, the prisoner's conduct, diligence, and general attitude merit such diminution.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(d).

46-18-705. Effect of violation of conditions. In cases where the convicted person violates the conditions of said sentence, he shall be returned to the court. The court may then require that the balance of his sentence be spent in full confinement, and further, the court may cancel any diminution of sentence granted under this part.

History: En. 95-2216 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2216(e).

Part 8

Effect of Conviction

Part Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Treason — no forfeiture of property, Art. II, sec. 30, Mont. Const.

Sections affecting the right to vote, Art. IV, sec. 2, Mont. Const.; 13-1-111, 13-2-402, 20-20-301.

Sections creating loss of or ineligibility for office, Art. IV, sec. 4, Mont. Const.; 2-16-501, 3-1-1109, 3-1-1110, 3-15-303, 5-5-403, 7-4-2520, 13-36-209, 13-36-210, 70-30-207.

Sections relating to denial, revocation, or suspension of professional or occupational licenses, 15-30-302, 16-10-403, 20-4-110, 23-4-201, 30-10-201, 32-2-409, 33-17-507, 33-17-1001, 33-21-113, 33-30-313, 37-3-323, 37-4-321, 37-6-311, 37-7-311, 37-7-321, 37-8-441, 37-10-311, 37-11-321, 37-13-311, 37-14-321, 37-15-321, 37-16-411, 37-17-311, 37-18-311, 37-19-311, 37-30-502, 37-40-311, 37-43-311, 37-47-302, 37-47-341, 37-50-321, 37-51-321, 37-60-321, 37-61-301, 37-65-321, 37-66-321, 37-67-331, 39-5-203, 80-7-104.

Sections creating loss of or ineligibility for employment, 7-32-2104, 7-32-2107, 7-32-4160, 32-1-322, 32-1-462, 44-1-612.

Sections providing for loss of benefits, 10-2-403, 19-6-703, 19-7-703, 19-8-803, 72-2-104.

Sections creating civil liability, 20-3-332, 23-5-131, 37-51-323, 61-4-406, 75-2-413.

Sections creating forfeiture of money or property, 30-14-132, 33-21-113, 81-5-104, 81-5-111, 87-1-513.

Still competent to be a witness, Rules 601, 609, M.R.Ev. (see Title 26, ch. 10).

Policy to minimize restrictions on or loss of licenses — encourage rehabilitation, Title 37, ch. 1, part 2.

Employment restrictions — sexual offenders, 46-18-255.

Registration of sexual offenders, Title 46, ch. 23, part 5.

Loss of driver's license, 61-5-205, 61-5-401.

46-18-801. Effect of conviction — civil disabilities. (1) Conviction of any offense shall not deprive the offender of any civil or constitutional rights except as they shall be specifically enumerated by the sentencing judge as necessary conditions of the sentence directed toward the objectives of rehabilitation and the protection of society.

(2) No person shall suffer any civil or constitutional disability not specifically included by the sentencing judge in his order of sentence.

(3) When a person has been deprived of any of his civil or constitutional rights by reason of conviction for an offense and his sentence has expired or he has been pardoned, he shall be restored to all civil rights and full citizenship, the same as if such conviction had not occurred.

History: En. 95-2227 by Sec. 9, Ch. 513, L. 1973; R.C.M. 1947, 95-2227.

Cross-References

Rights of convicted, Art. II, sec. 28, Mont. Const.

Additional restrictions on sentence, 46-18-202.

Part 9

Appellate Review of Legal Sentences

46-18-901. Review division of the supreme court for review of sentences. (1) The chief justice of the supreme court of Montana shall appoint three district court judges to act as a review division of the supreme court and shall designate one of such judges to act as chairman thereof. The clerk of the Montana supreme court shall record such appointment and shall give notice thereof to the clerk of every district court.

(2) This review division shall meet at least four times a year or more as its business requires, as determined by the chairman. The review division shall hold its meetings at Deer Lodge.

(3) The decision of any two of such judges shall be sufficient to determine any matter before the review division.

(4) The review division may adopt any rules which will expedite its review of sentences. The division is also authorized to appoint a secretary and such clerical help as it deems adequate and fix their compensation.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-902. Interested judge not to act. No judge shall sit or act on a review of sentence imposed by him. In any case in which review of a sentence imposed by any of the judges serving on the review division is to be acted on by said division, the chief justice of the supreme court of Montana may designate another judge to act in place of such judge.

History: En. 95-2501 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2501(part).

46-18-903. Application for review. (1) Any person sentenced to a term of 1 year or more in the state prison by any court of competent jurisdiction may within 60 days from the date such sentence was imposed, except in any case in which a different sentence could not have been imposed, file with the clerk of the district court in the county in which judgment was rendered an application for review of the sentence by the review division. Upon imposition of the sentence, the clerk shall give written notice to the person sentenced of his right to make such a request. Such notice shall include a statement that review of the sentence may result in decrease or increase of the sentence within limits fixed by law.

(2) The clerk shall transmit such application to the review division and shall notify the judge who imposed the sentence and the county attorney of the county in which the sentence was imposed. Such judge may transmit to the review division a statement of his reasons for imposing the sentence and shall transmit such a statement within 7 days if requested to do so by the review division.

(3) The review division may for cause shown consider any late request for review of sentence and may grant such request.

(4) The filing of an application for review shall not stay the execution of the sentence.

History: En. 95-2502 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2502.

46-18-904. Procedure upon review. (1) In each case in which an application for review is filed in accordance with 46-18-903, the review division shall review the judgment so far as it relates to the sentence imposed, either increasing or decreasing the penalty, and any other sentence imposed on the person at the same time and may order such different sentence or sentences to be imposed as could have been imposed at the time of the imposition of the sentence under review or may decide that the sentence under review should stand.

(2) In reviewing any judgment, said division may require the production of presentence reports and any other records, documents, or exhibits relevant to such review proceedings. The appellant may appear and be represented by counsel, and the state may be represented by the county attorney of the county in which the sentence was imposed. Any other interested person, including the sentencing judge, may attend and participate in the review proceedings.

(3) The sentence imposed by the district court is presumed correct. If the review division orders a different sentence, the court sitting in any convenient county shall resentence the defendant as ordered by the review division. Time served on the sentence reviewed shall be deemed to have been served on the sentence substituted.

History: En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part); amd. Sec. 1, Ch. 654, L. 1985.

46-18-905. Decision — finality, report of. (1) The decision of the review division in each case shall be final, and the reasons for such decision shall be stated therein. The original of each decision shall be sent to the clerk of the court for the county in which the judgment was rendered, and a copy shall be sent to the judge who imposed the sentence reviewed, the person sentenced, and the principal officer of the institution in which he is confined.

(2) The decision shall be reported in the Montana Reports.

History: En. 95-2503 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2503(part).

Part 10

Home Arrest

46-18-1001. Definitions. As used in this part, the following definitions apply:

(1) "Monitoring device" means an electronic device or apparatus that is limited in capability to recording or transmitting information concerning the offender's presence in or absence from the home. The device must be minimally intrusive.

(2) (a) "Home" means the temporary or permanent residence of an offender consisting of the actual living area approved by the supervising authority.

(b) When more than one residence or family are located on a single piece of property, the term does not include the residence of any other person who is not part of the social unit formed by the offender's immediate family.

(3) "Home arrest" means the use of a person's home for purposes of confinement.

(4) "Supervising authority" means, in the case of an adult felon, the corrections division of the department of corrections and human services; in the case of an adult misdemeanant, a court-approved entity other than the corrections division of the department of corrections and human services; or, in the case of a juvenile, the juvenile probation division of the youth court or any other person or entity appointed by the court.

(5) "Violent felony offense" means deliberate homicide, mitigated deliberate homicide, negligent homicide, aggravated assault, negligent vehicular assault, kidnapping, aggravated kidnapping, robbery, sexual intercourse without consent, sexual abuse of children, arson, aggravated burglary, escape, any criminal attempt to commit an enumerated offense, or conviction as a persistent felony offender when the offender has a felony conviction for any of the listed offenses within the 5-year period preceding the date of the present conviction.

History: En. Sec. 1, Ch. 105, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

46-18-1002. Home arrest — petition — agreement. (1) An offender may petition a sentencing court for an order directing that all or a portion of a sentence of imprisonment in the county jail or state prison be served under conditions of home arrest. Petitions may be considered and ruled upon by the sentencing court prior to and throughout the term of the offender's sentence.

(2) The sentencing judge shall study the records of all persons petitioning for home arrest and, in his discretion, may:

(a) refer the case to the appropriate supervising authority for approval and acceptance into the home arrest program. The supervising authority may accept or reject any referral.

(b) conduct hearings on the desirability of granting home arrest;

(c) order a term of home arrest in lieu of a sentence of imprisonment in the county jail or state prison. The time actually spent in home arrest pursuant to this section may not exceed 6 months or the maximum term of imprisonment imposed, whichever is shorter.

(d) issue a warrant for a person when there is reason to believe the person has violated the conditions of home arrest, conduct hearings on the matter, and order imprisonment in the county jail or state prison upon proof of violation; and

(e) grant final discharge from arrest.

(3) A home arrestee shall execute a written agreement with the court setting forth all the conditions of home arrest. The order of home arrest must incorporate that agreement and must order compliance with its terms. The order and agreement must be transmitted to the supervising authority and to the appropriate jail or prison official.

(4) Time spent in home arrest must be credited against the maximum term of imprisonment imposed for the offender pursuant to law.

(5) Home arrest must be under the supervision of the supervising authority. A home arrestee is subject to the decisions of the supervising authority during the period of supervision. Fees for supervision or equipment usage must be paid directly to the clerk of the sentencing court and must be distributed by the clerk to the supervising authority.

History: En. Sec. 2, Ch. 105, L. 1991.

Compiler's Comments

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

46-18-1003. Home arrest — conditions — fees — consent of cohabitors. (1) A home arrestee must be confined to his home under conditions imposed by the sentencing court, which may include but are not limited to the following:

(a) The home arrestee must be confined to his home at all times except when:

(i) working at approved employment or traveling directly to and from employment;

(ii) seeking employment;

(iii) undergoing medical, psychiatric, or mental health treatment or participating in an approved counseling or aftercare program;

(iv) attending an approved educational institution or program;

(v) attending a regularly scheduled religious service at a place of worship;

(vi) participating in an approved community service program; or

(vii) conforming to a schedule prepared by the supervising authority, specifically setting forth the times when he may be absent from the home and the locations where he may be during those times.

(b) The home arrestee may not commit another offense during the period of home arrest.

(c) The home arrestee may not change the place of home arrest or the schedule without prior approval of the supervising authority.

(d) The home arrestee shall maintain a telephone or other approved monitoring device in the home or on the arrestee's person at all times.

(e) Conditions set by the court or the supervising authority may include:

(i) restitution;

(ii) supervision fees under 7-32-2245, 46-18-702, or 46-18-703;

(iii) any of the conditions imposed on persons on probation or conditional discharge under 46-23-1011 or 46-23-1021.

(2) A written and notarized consent agreement must be filed with the court by every adult who will share the offender's home during the term of home arrest.

(3) Violation of the provisions of any condition of home arrest may subject the home arrestee to prosecution under 45-7-306.

History: En. Sec. 3, Ch. 105, L. 1991.

Compiler's Comments

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

46-18-1004. Home arrest — ineligibility. A person being held under a detainer, warrant, or process issued by some other jurisdiction is not eligible for home arrest. A person convicted of a violent felony offense is not eligible for home arrest. However, this section does not prevent the use of a monitoring device as a part of an intensive supervision program or other program of the department of corrections and human services.

History: En. Sec. 4, Ch. 105, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

46-18-1005. Home arrest — responsibility for own living expenses — government benefits. A person serving a sentence under conditions of home arrest is responsible for food, housing, clothing, and medical care expenses and is eligible for government benefits to the same extent as a person on probation, parole, or conditional discharge.

History: En. Sec. 5, Ch. 105, L. 1991.

Compiler's Comments

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

46-18-1006. Home arrest — list of offenders. At least once every 30 days, the supervising authority shall provide all local and county law enforcement agencies with a list of the offenders under home arrest in their jurisdictions. This list must include the following information:

(1) the offender's place of home arrest;

(2) the offense for which the offender was charged, convicted, or otherwise placed under home arrest;

(3) the date that the sentence of home arrest will be completed; and

(4) the name, address, and phone number of the officer of the supervising authority for the offender.

History: En. Sec. 6, Ch. 105, L. 1991.

Compiler's Comments

Applicability: Section 15, Ch. 105, L. 1991, provided: "[This act] applies to sentences imposed after [the effective date of this act] [effective October 1, 1991]."

CHAPTER 19

EXECUTION OF JUDGMENT

Part 1 — Method of Execution

46-19-101. Commitment of defendant.
46-19-102. Execution of a fine.
46-19-103. Execution of death sentence.

Part 2 — Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined.
46-19-202. Proceedings following determination regarding fitness.
46-19-203. Procedure for determining if woman is pregnant.
46-19-204. Proceedings following determination regarding pregnancy.

Part 3 — Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents.
46-19-302. Effectuation of purposes of compact.
46-19-303. Power of governor to enter into contracts.
46-19-304. Commitment or transfer of inmate to institution outside of state.
46-19-305. Hearings requested by other states.

Part 4 — Interstate Corrections Compact

46-19-401. Compact adopted — text.
46-19-402. Effectuation of purposes of compact.

Part 1

Method of Execution

Part Cross-References

County jails, Title 7, ch. 32, part 22.

Escape from custody — use of force to prevent, 45-3-106.

Escape from custody — definition, 45-7-306.

Possession of weapon by prisoner, 45-8-318.

State prison, Title 53, ch. 30, part 1.

46-19-101. Commitment of defendant. Upon rendition of judgment after pronouncement of a sentence imposing punishment of imprisonment or death, the court shall commit the defendant to the custody of the sheriff, who shall deliver the defendant to the place of his confinement or execution.

History: En. 95-2301 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2301.

46-19-102. Execution of a fine. (1) If the judgment is for a fine alone, execution may issue thereon as on a judgment in a civil case.

(2) If the judgment is for a fine and imprisonment until the fine is paid, the defendant must be committed to the custody of the proper officer and detained until the judgment is complied with. The imprisonment must not exceed 1 day for every $25 of the fine.

History: En. 95-2302 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2302; amd. Sec. 3, Ch. 270, L. 1989.

Cross-References

Execution of a judgment, Title 25, ch. 13 and 14.

46-19-103. Execution of death sentence. (1) In pronouncing the sentence of death, the court shall set the date of execution which must not be less than 30 days or more than 60 days from the date the sentence is pronounced. If execution has been stayed by any court and the date set for execution has passed prior to dissolution of the stay, the court in which the defendant was previously sentenced shall, upon dissolution of the stay, set a new date of execution for not less than 20 or more than 90 days from the day the date is set. The defendant is entitled to be present in court on the day the new date of execution is set.

(2) Pending execution of a sentence of death, the sheriff may deliver the defendant to the state prison for confinement, and the state shall bear the costs of imprisoning the defendant from the date of delivery.

(3) The punishment of death must be inflicted by hanging the defendant by the neck until he is dead or, at the election of the defendant, by administration of a continuous, intravenous injection of a lethal quantity of an ultra-fast-acting barbiturate in combination with a chemical paralytic agent until a licensed physician pronounces that the defendant is dead according to accepted standards of medical practice. A defendant who wishes to choose execution by lethal injection shall do so at the hearing at which an execution date is set, and if he does not, the option to choose death by lethal injection is waived.

(4) When an execution date is set, a death warrant signed by the judge and attested by the clerk of court under the seal of the court must, within 5 days, be prepared. The warrant and a certified copy of the judgment must be delivered to the warden of the state prison. The warrant must be directed to the warden and recite the conviction, judgment, method of execution, appointed date of execution, and the duration of the warrant.

(5) The warden of the Montana state prison shall provide a suitable and efficient room or place in which executions will be carried out, enclosed from public view, within the walls of the state prison, and shall provide all implements necessary to the execution. The warden shall, subject to subsec-

tion (6), select the person to perform the execution, and the warden or his designee shall supervise the execution. The identity of the executioner must remain anonymous. Facts pertaining to the selection and training of the executioner must remain confidential.

(6) An execution carried out by lethal injection must be performed by a person selected by the warden and trained to administer the injection. The person administering the injection need not be a physician, registered nurse, or licensed practical nurse licensed or registered under the laws of this or any other state. The warden must allow the execution to be observed by 12 witnesses, 3 of whom may be designated by the person to be executed.

(7) Within 20 days after the execution, the warden shall return the death warrant to the clerk of the court from which it was issued, noting on the warrant the time, mode, and manner in which it was executed.

History: En. 95-2303 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2303; amd. Sec. 1, Ch. 191, L. 1981; amd. Sec. 1, Ch. 292, L. 1983; amd. Sec. 4, Ch. 411, L. 1983; amd. Sec. 107, Ch. 370, L. 1987; amd. Sec. 1, Ch. 552, L. 1989.

Cross-References

Execution of death sentence justified, 45-3-109.

Definition of "dead", 50-22-101.

Part 2

Suspension of Execution of Death

46-19-201. When and how mental fitness of defendant determined. If after judgment of death there is good reason to suppose that the defendant lacks mental fitness, the mental fitness of the defendant will be determined in accordance with the provisions of chapter 14 of this title.

History: En. 95-2304 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2304.

46-19-202. Proceedings following determination regarding fitness. (1) If it is found that defendant is mentally fit as provided in 46-19-201, the warden of the Montana state prison shall execute the judgment.

(2) If it is found that he lacks fitness, the execution of judgment must be suspended and the court shall commit him to the custody of the superintendent of the Montana state hospital to be placed in an appropriate institution of the department of corrections and human services for so long as the lack of fitness endures.

(3) When the court, on its own motion or upon application of the superintendent of the Montana state hospital, the county prosecuting officer, or the defendant or his legal representative, determines after a hearing, if a hearing is requested, that the defendant has regained fitness to proceed, the warden must be directed by the court to carry out the execution. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to proceed with execution of the sentence,

the court may suspend the execution of the sentence and may order the defendant to be discharged.

History: En. 95-2305 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 94, Ch. 120, L. 1974; R.C.M. 1947, 95-2305; amd. Sec. 8, Ch. 361, L. 1983; amd. Sec. 5, Ch. 411, L. 1983; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

46-19-203. Procedure for determining if woman is pregnant. If there is good reason to suppose a woman against whom a judgment of death is rendered is pregnant, the sheriff of the county, with the concurrence of the judge of the court by which the judgment was rendered, must summon a jury of three physicians to inquire into the supposed pregnancy. Immediate notice of this inquiry must be given to the county attorney of the county who must attend the inquiry and may produce his own witnesses.

History: En. 95-2306 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2306.

46-19-204. Proceedings following determination regarding pregnancy. If it is found by the inquiry that the woman is not pregnant, the warden of the Montana state prison shall execute the judgment. If it is found that the woman is pregnant, the warden shall suspend the execution of judgment and transmit the inquisition to the governor. When the governor is satisfied that the woman is no longer pregnant, he may issue a death warrant appointing a day for the execution of the judgment. The warrant must recite the conviction, the judgment, the method of execution, that execution of judgment was suspended due to pregnancy, that the governor is satisfied that the woman is no longer pregnant, the appointed date for the execution, and the duration of the warrant.

History: En. 95-2307 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2307; amd. Sec. 6, Ch. 411, L. 1983; amd. Sec. 1, Ch. 551, L. 1989.

Part 3

Commitment to Prison in Another State

46-19-301. Western Interstate Corrections Compact — contents. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment, and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on the basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders.

Article II. Definitions

As used in this compact, unless the context clearly requires otherwise:

(1) "state" means a state of the United States or, subject to the limitation contained in Article VII, Guam;

(2) "sending state" means a state party to this compact in which conviction was had;

(3) "receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had;

(4) "inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution;

(5) "institution" means any prison, reformatory, or other correctional facility (including but not limited to a facility for the mentally ill or mentally defective) in which inmates may lawfully be confined.

Article III. Contracts

(1) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(a) its duration;

(b) payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(c) participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(d) delivery and retaking of inmates;

(e) such other matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving states.

(2) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific per centum of the capacity of the institution to be kept available for use by inmates of the sending state

or states so contracting. Any sending state so contracting may, to the extent that moneys are legally available therefor, pay to the receiving state a reasonable sum as consideration for such enlargement of capacity or provision of equipment or structures and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(3) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(1) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in or transfer of an inmate to an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(2) The appropriate officials of any state party to this compact shall have access at all reasonable times to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(3) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(4) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(5) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(6) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subsection shall be borne by the sending state.

(7) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate and the sending and receiving states shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(8) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits, incur or be relieved of any obligations, or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(9) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(1) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(2) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility

for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto, and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that, if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon, and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon, and Washington.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 2 years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates or to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. 95-2308 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2308.

46-19-302. Effectuation of purposes of compact. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions, including but not limited to the making and submission of such reports as are required by the compact.

History: En. 95-2310 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2310.

46-19-303. Power of governor to enter into contracts. The governor is hereby empowered to designate the department of corrections and human services to enter into such contracts recommended by the department on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to 46-19-301.

History: En. 95-2312 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2312; amd. Sec. 1, Ch. 59, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

46-19-304. Commitment or transfer of inmate to institution outside of state. Any court or state agency having power to commit or transfer an inmate (as defined in Article II(4) of the Western Interstate Corrections Compact) to any institution for confinement may commit or transfer such inmate to any institution outside this state if this state has entered into a contract or contracts for the confinement of inmates in said institution pursuant to Article III of the Western Interstate Corrections Compact.

History: En. 95-2309 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2309.

46-19-305. Hearings requested by other states. The board of pardons and the department of corrections and human services shall hold such hearings as may be requested by any other party state pursuant to Article IV(6) of the Western Interstate Corrections Compact.

History: En. 95-2311 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 95, Ch. 120, L. 1974; R.C.M. 1947, 95-2311; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Part 4

Interstate Corrections Compact

46-19-401. Compact adopted — text. The Interstate Corrections Compact is entered into by this state with any and all other states legally joining therein in the form substantially as follows:

INTERSTATE CORRECTIONS COMPACT

Article I. Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

Article II. Definitions

As used in this compact, unless the context requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates may lawfully be confined.

Article III. Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.
2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.
3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.
4. Delivery and retaking of inmates.
5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

Article IV. Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state. For transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subsection, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

Article V. Acts Not Reviewable in Receiving State — Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

Article VI. Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

Article VII. Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

Article VIII. Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until one year after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

Article IX. Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

Article X. Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 112, L. 1987.

46-19-402. Effectuation of purposes of compact. The department of corrections and human services shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within its jurisdiction, including but not limited to the making and submission of such reports as are required by the compact.

History: En. Sec. 2, Ch. 112, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

CHAPTER 20

APPEALS

Part 1 — General Provisions

46-20-101. Single method of review in criminal cases.
46-20-102. Superseded.
46-20-103. Scope of appeal by state.
46-20-104. Scope of appeal by defendant.
46-20-105. Appeal by one codefendant.

Part 2 — Initiation of Appeal

46-20-201. Superseded.
46-20-202. Superseded.
46-20-203. Superseded.
46-20-204. Stay of execution and relief pending appeal.
46-20-205. Effect of an appeal by the state.

Part 3 — The Record on Appeal (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part 4 — Briefs
(Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part 5 — Motions and Papers in General
(Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part 6 — Oral Argument
(Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part 7 — Action by Court

46-20-701. Elements of record court considers on review — errors noticed.
46-20-702. Renumbered 46-20-701(2) by Code Commissioner, 1987.
46-20-703. Action reviewing court may take.
46-20-704. Superseded.
46-20-705. Superseded.
46-20-706. Termination of appeal — remand.
46-20-707. Discharge of defendant on reversal of judgment.

Chapter Cross-References

Procedure on appeal — Alcoholic Beverage Code, 16-6-202.

Part 1

General Provisions

46-20-101. Single method of review in criminal cases. (1) This chapter shall govern review in all criminal cases.

(2) All existing methods of review in criminal cases in the state are abolished. After January 1, 1968, the only method of review in criminal cases shall be by notice of appeal.

History: En. 95-2401 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2401.

46-20-102. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2402 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2402.

46-20-103. Scope of appeal by state. (1) Except as otherwise specifically authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

(a) dismissing a case;
(b) modifying or changing the verdict as provided in 46-16-702(3)(c);
(c) granting a new trial;
(d) quashing an arrest or search warrant;
(e) suppressing evidence;
(f) suppressing a confession or admission;

(g) granting or denying change of venue; or

(h) imposing a sentence that is contrary to law.

History: **En. 95-2403 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 41, Ch. 184, L. 1977; R.C.M. 1947, 95-2403; amd. Sec. 1, Ch. 478, L. 1989.**

Cross-References

Appeal by party other than state to District Court from Justices' or City Courts, 46-17-311.

46-20-104. Scope of appeal by defendant. (1) An appeal may be taken by the defendant only from a final judgment of conviction and orders after judgment which affect the substantial rights of the defendant.

(2) Upon appeal from a judgment, the court may review the verdict or decision and any alleged error objected to which involves the merits or necessarily affects the judgment. Failure to make a timely objection during trial constitutes a waiver of the objection except as provided in 46-20-701(2).

History: **En. 95-2404 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2404; amd. Sec. 1, Ch. 319, L. 1983.**

46-20-105. Appeal by one codefendant. When several defendants are tried jointly, any one or more of them may take an appeal but those who do not join in the appeal shall not be affected thereby.

History: **En. 95-2429 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2429.**

Part 2

Initiation of Appeal

Part Cross-References

Notice to Attorney General when department or board appeals, 46-1-302.

46-20-201. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: **En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(a) thru (c).**

46-20-202. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: **En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(d).**

46-20-203. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: **En. 95-2405 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2405(e).**

46-20-204. Stay of execution and relief pending appeal. (1) If an appeal is taken, a sentence of death shall be stayed by order of the trial court until final order by the supreme court.

(2) If an appeal is taken and the defendant is admitted to bail, a sentence of imprisonment shall be stayed by the trial court.

(3) If an appeal is taken, a sentence to pay a fine or a fine and costs shall be stayed by the trial court or by the reviewing court.

(4) If an appeal is taken and the accused was admitted to probation, he shall remain on probation or post bail.

History: **En. 95-2406 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2406.**

46-20-205. Effect of an appeal by the state. An appeal taken by the state in no case stays or affects the operation of the judgment or order in favor of the defendant until judgment or order is reversed.

History: **En. 95-2407 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2407.**

Part 3

The Record on Appeal (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-301. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(a).

46-20-302. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(b); amd. Sec. 1, Ch. 148, L. 1983.

46-20-303. En. 95-2428 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2428.

46-20-304. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(c).

46-20-305. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(d).

46-20-306. En. 95-2408 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2408(e).

46-20-307 through 46-20-310 reserved.

46-20-311. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(a), (b).

46-20-312. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).

46-20-313. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(part).

46-20-314. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(d).

46-20-315. En. 95-2409 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2409(e).

46-20-316. En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(a).

46-20-317. En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(b).

46-20-318. En. 95-2410 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2410(c); amd. Sec. 24, Ch. 116, L. 1979.

46-20-319. En. 95-2411 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2411.

Part 4

Briefs (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-401. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(a).

46-20-402. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(b).

46-20-403. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(c).

46-20-404. En. 95-2417 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2417.

46-20-405. En. 95-2419 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2419.

46-20-406. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(d).

46-20-407. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(e).

46-20-408. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(f).

46-20-409. En. 95-2416 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2416(g).

46-20-410. En. 95-2418 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2418.

Part 5

Motions and Papers in General (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-501. En. 95-2415 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2415.

46-20-502. En. 95-2413 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2413.

46-20-503. En. 95-2414 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2414.

46-20-504. En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(c).

46-20-505 through 46-20-510 reserved.

46-20-511. En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(a).

46-20-512. En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(b).

46-20-513. En. 95-2420 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2420(c).

Part 6

Oral Argument (Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987)

Part Compiler's Comments

Histories of Superseded Sections:

46-20-601. En. 95-2424 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2424(a), (b).

46-20-602. En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(a).

46-20-603. En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(b), (c), (f).

46-20-604. En. 95-2421 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2421(d), (e).

Part 7

Action by Court

46-20-701. Elements of record court considers on review — errors noticed. (1) Whenever the record on appeal shall contain any order, ruling, or proceeding of the trial court against the respondent affecting his substantial rights on the appeal of said cause, together with any required objection of such respondent, the supreme court on such appeal shall consider such orders, rulings, or proceedings and the objections thereto and shall reverse or affirm the cause on said appeal according to the substantial rights of the respective parties, as shown upon the record. No cause shall be reversed by reason of any error committed by the trial court against the appellant unless the record shows that the error was prejudicial.

(2) Any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. No claim alleging an error affecting jurisdictional or constitutional rights may be noticed on appeal, if the alleged error was not objected to as provided in 46-20-104, unless the defendant establishes that the error was prejudicial as to his guilt or punishment and that:

(a) the right asserted in the claim did not exist at the time of the trial and has been determined to be retroactive in its application;

(b) the prosecutor, the judge, or a law enforcement agency suppressed evidence from the defendant or his attorney that prevented the claim from being raised and disposed of; or

(c) material and controlling facts upon which the claim is predicated were not known to the defendant or his attorney and could not have been ascertained by the exercise of reasonable diligence.

History: (1)En. 95-2412 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2412; (2)En. 95-2425 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2425; amd. Sec. 2, Ch. 319, L. 1983; Sec. 46-20-702, MCA 1985; redes. 46-20-701(2) by Code Commissioner, 1987.

46-20-702. Renumbered 46-20-701(2) by Code Commissioner, 1987.

46-20-703. Action reviewing court may take. On appeal the reviewing court may:

(1) reverse, affirm, or modify the judgment or order from which the appeal is taken;

(2) set aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) reduce the offense of which the appellant was convicted to a lesser included offense;

(4) reduce the punishment imposed by the trial court; or

(5) order a new trial if justice so requires.

History: En. 95-2426 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 42, Ch. 184, L. 1977; R.C.M. 1947, 95-2426.

46-20-704. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2422 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2422.

46-20-705. Superseded. Sup. Ct. Ord. June 16, 1986, eff. Jan. 19, 1987.

History: En. 95-2423 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2423; amd. Sec. 1, Ch. 294, L. 1981.

46-20-706. Termination of appeal — remand. (1) Upon termination of the appeal, the supreme court shall remand the cause with proper instruction together with the opinion of the court. The clerk shall return all original documents to the trial court.

(2) After the cause has been remanded to the trial court, the appellate court has no further jurisdiction of the appeal or the proceedings thereon and

all orders necessary to carry the judgment into effect must be made by the court to which the cause is remanded.

History: **En. 95-2427 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2427.**

46-20-707. Discharge of defendant on reversal of judgment. If a judgment against the defendant is reversed without ordering a new trial, the appellate court must:

(1) if he is in custody, direct him to be discharged therefrom;

(2) if he is on bail, direct that his bail be exonerated; or

(3) if money was deposited instead of bail, direct that it be refunded to the defendant.

History: **En. 95-2430 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2430.**

CHAPTER 21

POSTCONVICTION HEARING

Part 1 — Initiating Proceedings

46-21-101. When validity of sentence may be challenged.
46-21-102. When petition may be filed.
46-21-103. Commencement of proceedings.
46-21-104. Contents of petition.
46-21-105. Waiver of grounds for relief.

Part 2 — Action of Court

46-21-201. Proceedings on petition.
46-21-202. Record of proceedings.
46-21-203. Review.

Part 1

Initiating Proceedings

46-21-101. When validity of sentence may be challenged. (1) A person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims that a sentence was imposed in violation of the constitution or the laws of this state or the constitution of the United States, that the court was without jurisdiction to impose the sentence, that a suspended or deferred sentence was improperly revoked, or that the sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under a writ of habeas corpus, writ of coram nobis, or other common law or statutory remedy may petition the court that imposed the sentence or the supreme court to vacate, set aside, or correct the sentence or revocation order.

(2) If the sentence was imposed by a justice's, municipal, or city court, the petition must be filed with the district court in the county where the lower court is located.

(3) If the person is in custody, the person may elect to file the petition directly with the supreme court.

History: En. 95-2601 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 43, Ch. 184, L. 1977; R.C.M. 1947, 95-2601; amd. Sec. 1, Ch. 195, L. 1981; amd. Sec. 1, Ch. 211, L. 1985; amd. Sec. 225, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) concerning District Court in which petition must be filed; inserted (3) concerning direct filing with Supreme Court; and made minor changes in style.

46-21-102. When petition may be filed. A petition for the relief referred to in 46-21-101 may be filed at any time within 5 years of the date of the conviction.

History: En. 95-2604 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 44, Ch. 184, L. 1977; R.C.M. 1947, 95-2604; amd. Sec. 2, Ch. 195, L. 1981; amd. Sec. 226, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Inserted reference to 46-21-101; and made minor change in style.

46-21-103. Commencement of proceedings. The proceeding for relief under 46-21-101 must be commenced by filing a verified petition with the clerk of the appropriate court. The clerk shall docket the petition upon its receipt and bring the petition promptly to the attention of the court.

History: En. 95-2602 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2602; amd. Sec. 227, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence after "proceeding", inserted "for relief under 46-21-101" and at end substituted "appropriate court" for "court in which the conviction took place or the clerk of the supreme court"; and made minor changes in style.

46-21-104. Contents of petition. (1) The petition for postconviction relief must:

(a) identify the proceeding in which the petitioner was convicted, give the date of the rendition of the final judgment complained of, and clearly set forth the alleged violation or violations;

(b) identify any previous proceedings that the petitioner may have taken to secure relief from his conviction; and

(c) have attached any affidavits, records, or other evidence supporting its allegations or state why the evidence is not attached.

(2) The petition must be accompanied by a supporting memorandum, including appropriate arguments and citations and discussion of authorities.

History: En. 95-2603 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2603; amd. Sec. 3, Ch. 195, L. 1981; amd. Sec. 228, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "petition", inserted "for postconviction relief"; and made minor changes in style.

46-21-105. Waiver of grounds for relief. (1) All grounds for relief claimed by a petitioner under 46-21-101 must be raised in the original or amended petition. Those grounds for relief not raised are waived unless the court on hearing a subsequent petition finds grounds for relief that could not reasonably have been raised in the original or amended petition.

(2) When a petitioner has been afforded a direct appeal of the petitioner's conviction, grounds for relief that could reasonably have been raised on direct appeal may not be raised in the original or amended petition.

History: En. 95-2607 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2607; amd. Sec. 4, Ch. 195, L. 1981; amd. Sec. 229, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence, substituted "46-21-101" for "this chapter"; and made minor changes in style.

Part 2

Action of Court

46-21-201. Proceedings on petition. (1) Unless the petition and the files and records of the case conclusively show that the petitioner is not entitled to relief, the court shall cause notice of the petition to be served upon the county attorney in the county in which the conviction took place and upon the attorney general and order them to file a responsive pleading to the petition. Following its review of the responsive pleading, the court may dismiss the petition as a matter of law for failure to state a claim for relief or it may grant a prompt hearing on the petition, determine the issue, and make findings of fact and conclusions with respect to the petition.

(2) If a hearing is required or the interests of justice require, the court shall appoint counsel for a petitioner who qualifies for the appointment of counsel under Title 46, chapter 8, part 1.

(3) The court, for good cause, may grant leave to either party to use the discovery procedures available in criminal or civil proceedings. Discovery procedures may be used only to the extent and in the manner the court has ordered or to which the parties have agreed.

(4) The court may receive proof of affidavits, depositions, oral testimony, or other evidence. In its discretion, the court may order the petitioner brought before the court for the hearing.

(5) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the prosecution, the petition must be dismissed.

History: En. 95-2605 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 45, Ch. 184, L. 1977; R.C.M. 1947, 95-2605; amd. Sec. 5, Ch. 195, L. 1981; amd. Sec. 230, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) concerning appointed counsel for a hearing; inserted (3) concerning discovery; in (5) substituted "prosecution" for "state" and at end substituted "petition must be dismissed" for "petitioner shall be returned to the custody of the person to whom the writ was directed"; and made minor changes in style.

46-21-202. Record of proceedings. A court that hears a petition pursuant to this chapter shall keep a record of the proceedings and enter its findings and conclusions.

History: En. 95-2606 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 46, Ch. 184, L. 1977; R.C.M. 1947, 95-2606; amd. Sec. 231, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

46-21-203. Review. Either the petitioner or the prosecution may appeal to the supreme court from an order entered on a petition. The appeal must be taken within 60 days of the entry of the order.

History: En. 95-2608 by Sec. 1, Ch. 196, L. 1967; amd. Sec. 47, Ch. 184, L. 1977; R.C.M. 1947, 95-2608; amd. Sec. 6, Ch. 195, L. 1981; amd. Sec. 232, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Substituted "prosecution" for "state"; and made minor changes in style.

CHAPTER 22

HABEAS CORPUS

Part 1 — Availability of Writ

46-22-101. Applicability of writ of habeas corpus.
46-22-102. No release for technical defects.
46-22-103. Writ for purpose of bail.

Part 2 — Issuance of Writ

46-22-201. Application for writ of habeas corpus.
46-22-202. Granting writ of habeas corpus.
46-22-203. Writ granted without delay.
46-22-204. Writ and process may issue at any time.
46-22-205. Form of writ.
46-22-206. Service of writ.

Part 3 — Return of Writ, Hearing, Appeal

46-22-301. Return of service.
46-22-302. Appearance of petitioner.
46-22-303. Refusal to obey writ — contempt.
46-22-304. Hearing on return.
46-22-305. Production of evidence.
46-22-306. Disposition of petitioner.
46-22-307. Appeal by prosecution.

Chapter Cross-References

Right of habeas corpus, Art. II, sec. 19, Mont. Const.

Part 1

Availability of Writ

46-22-101. Applicability of writ of habeas corpus. (1) Except as provided in subsection (2), every person imprisoned or otherwise restrained of liberty within this state may prosecute a writ of habeas corpus to inquire into the cause of imprisonment or restraint and, if illegal, to be delivered from the imprisonment or restraint.

(2) The writ of habeas corpus is not available to attack the validity of the conviction or sentence of a person who has been adjudged guilty of an offense in a court of record and has exhausted the remedy of appeal. The relief under this chapter is not available to attack the legality of an order revoking a suspended or deferred sentence.

History: En. 95-2701 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2701; amd. Sec. 7, Ch. 195, L. 1981; amd. Sec. 2, Ch. 211, L. 1985; amd. Sec. 233, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (2) substituted "The writ of habeas corpus" for "Relief under this chapter" and deleted last sentence that read: "Relief for such purposes is limited to the provisions of Title 46, chapter 21"; and made minor changes in style.

46-22-102. No release for technical defects. A person may not be released on a writ of habeas corpus due to any technical defect in commitment not affecting the person's substantial rights.

History: En. 95-2716 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2716; amd. Sec. 234, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor change in style.

46-22-103. Writ for purpose of bail. When a person is imprisoned or detained in custody on any criminal charge for want of bail, such person is entitled to a writ of habeas corpus for the purpose of giving bail upon averring that fact in his petition, without alleging that he is illegally confined.

History: En. 95-2702 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2702.

Part 2

Issuance of Writ

46-22-201. Application for writ of habeas corpus. (1) Application for a writ of habeas corpus is made by petition signed either by the party for whose relief it is intended or by some person on the petitioner's behalf. It must specify:

(a) that the petitioner is unlawfully imprisoned or restrained of liberty;

(b) why the imprisonment or restraint is unlawful; and

(c) where and by whom the petitioner is confined or restrained.

(2) All parties must be named if they are known or otherwise described so that they may be identified.

(3) The petition must be verified by the oath or affirmation of the party making the application.

History: En. 95-2703 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2703; amd. Sec. 25, Ch. 116, L. 1979; amd. Sec. 235, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a) substituted "petitioner" for "person in whose behalf the writ is applied for"; in (1)(c), before "by whom", deleted "the officer or person"; in (2) substituted "otherwise described so that they may be identified" for "described if they are not known"; and made minor changes in style.

46-22-202. Granting writ of habeas corpus. (1) A writ of habeas corpus may be granted by any justice of the supreme court or by any district court judge upon petition by or on behalf of any person restrained of liberty within the justice's or judge's jurisdiction.

(2) When a writ of habeas corpus is issued, it may be made returnable before the issuing court.

History: En. 95-2704 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2704; amd. Sec. 26, Ch. 116, L. 1979; amd. Sec. 236, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style.

Cross-References

Individual power of Supreme Court Justices to issue Writs of Habeas Corpus, 3-2-212.

District Court may issue and determine at chambers, 3-5-311, 3-5-312.

46-22-203. Writ granted without delay. Any justice or judge authorized to grant a writ of habeas corpus shall grant the writ without delay if it appears that a writ ought to issue.

History: En. 95-2705 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2705; amd. Sec. 237, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "justice" for "court"; and made minor changes in style.

46-22-204. Writ and process may issue at any time. The writ of habeas corpus or any associated process may be issued and served on any day or at any time.

History: En. 95-2715 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2715; amd. Sec. 238, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Substituted "any associated process" for "process authorized by this chapter"; and made minor changes in style.

Cross-References

Court actions permitted on nonjudicial days, 3-1-302.

46-22-205. Form of writ. (1) The writ of habeas corpus must be directed to the person having custody of or restraining the person on whose behalf the application is made and must command that person to have the petitioner before the judge before whom the writ is returnable at a time and place specified.

(2) The issue or issues to be determined upon return of the writ may be stated either in the writ or in an order attached to the writ. If the issues to be determined are not stated in the writ or in an attached order, then a copy of the petition must be attached to the writ.

History: En. 95-2707 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2707; amd. Sec. 239, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted "petitioner" for "body of such person" and before "judge" deleted "court or"; in (2), after "determined", deleted "upon return of the writ"; and made minor changes in style.

46-22-206. Service of writ. (1) The writ of habeas corpus must be served upon the person to whom it is directed. If the writ is directed to a state institution, a copy of the writ must be served upon the attorney general. If the writ is directed to a county facility, a copy of the writ must be served upon the county attorney.

(2) The writ must be served by the clerk of court, the sheriff, or any other person directed to do so by the court.

(3) The writ must be served in the same manner as a summons in civil actions, except when otherwise expressly directed by the judge.

History: En. 95-2708 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2708; amd. Sec. 240, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in second sentence, substituted "the writ is directed to a county facility" for "such person represents a county institution"; in (2) substituted "person" for "officer"; in (3), before "judge", deleted "court or"; and made minor changes in style.

Cross-References

Procedure for service of summons and writ, Rule 4D, M.R.Civ.P. (see Title 25, ch. 20).

Part 3

Return of Writ, Hearing, Appeal

46-22-301. Return of service. (1) The person upon whom the writ is served shall make a return and state in that return:

(a) (i) whether the petitioner is in that person's custody or under that person's power or restraint; and

(ii) if the petitioner is in custody or otherwise restrained, the authority for and cause of the custody or restraint; or

(b) if the petitioner has been transferred to the custody of or otherwise restrained by another, to whom the party was transferred, the time and place of the transfer, the reason for the transfer, and the authority under which the transfer took place.

(2) The return must be signed and verified by oath unless the person making the return is a sworn public officer making a return in an official capacity.

History: En. 95-2709 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2709; amd. Sec. 241, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section substituted "petitioner" for "party"; at end of (1)(a)(ii) deleted "if the detention is by legal process, a copy thereof must be annexed to the response"; at beginning of (1)(b) deleted "he had the party in his custody or under his power or restraint at any time prior or subsequent to the date of the writ", after "whom" inserted "the party was transferred", after "place" inserted "of the transfer", and substituted "the reason for the transfer" for "for what cause"; and made minor changes in style.

46-22-302. Appearance of petitioner. (1) The person commanded by the writ shall bring the petitioner before the court as required by the writ unless the petitioner cannot be brought before the court without danger to the petitioner's health. Sickness or infirmity must be confirmed in an affidavit by the person having custody of the petitioner.

(2) If the court is satisfied with the truth of the affidavit, the court may proceed and dispose of the case as if the petitioner were present or the hearing may be postponed until the petitioner is present.

History: En. 95-2710 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2710; amd. Sec. 242, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at beginning, substituted "petitioner before the court as required by" for "detained person according to the command of" and after "before the" substituted "court" for "judge"; in (2) substituted "court" for "judge" and in two places substituted reference to petitioner for reference to party; and made minor changes in style.

46-22-303. Refusal to obey writ — contempt. If the person commanded by the writ refuses to obey, that person must be adjudged in contempt of court.

History: En. 95-2706 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2706; amd. Sec. 243, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: Made minor change in style.

Cross-References

Contempts, Title 3, ch. 1, part 5.

46-22-304. Hearing on return. The court before whom the writ is returned shall immediately proceed to hear and examine the return. The hearing may be summary in nature.

History: En. 95-2711 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2711; amd. Sec. 244, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At beginning, after "court", deleted "or judge"; and made minor changes in style.

46-22-305. Production of evidence. Evidence may be produced and compelled in preparation of a hearing as provided in Title 46, chapter 22.

History: En. 95-2712 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2712; amd. Sec. 245, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: At end substituted "in preparation of a hearing as provided in Title 46, chapter 22" for "as in civil actions" and deleted last sentence that read: "Depositions taken in accordance with the Montana Rules of Civil Procedure may be read as evidence at the hearing on the writ".

Cross-References

Procedure for acquiring evidence, Rules 26, 28 through 37, M.R.Civ.P. (see Title 25, ch. 20).

46-22-306. Disposition of petitioner. (1) If the court finds in favor of the petitioner, an appropriate order must be entered with respect to the judgment or sentence in the former proceeding and any supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper.

(2) If the court finds for the prosecution, the petitioner must be returned to the custody of the person to whom the writ was directed.

History: En. 95-2713 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2713; amd. Sec. 246, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In (2) substituted "prosecution" for "state"; and made minor changes in style.

46-22-307. Appeal by prosecution. An appeal may be taken to the supreme court by the prosecution from an order of judgment discharging the petitioner. The court may admit the petitioner to bail pending appeal as provided in 46-9-107. The appeal must be taken in the same manner as in civil actions.

History: En. 95-2714 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2714; amd. Sec. 247, Ch. 800, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence substituted "prosecution" for "state" and in second sentence, at end, inserted "as provided in 46-9-107"; and made minor changes in style.

Cross-References

Procedure for appeal to Supreme Court, Title 25, ch. 12; Rule 72, M.R.Civ.P. (see Title 25, ch. 20).

CHAPTER 23

PROBATION, PAROLE, AND CLEMENCY

Part 1 — General Provisions—Board of Pardons

46-23-101. Short title.
46-23-102. Cases of juveniles excluded.
46-23-103. Definitions.
46-23-104. Board of pardons.
46-23-105. Legal adviser.
46-23-106. Information from courts to board.
46-23-107. Orders of board — reviewability.
46-23-108. Records and reports — confidentiality.

Part 2 — Granting of Parole

46-23-201. Prisoners eligible for nonmedical parole.
46-23-202. Investigation of prisoner by board.
46-23-203. Information from prison officials.
46-23-204. All persons may be heard — counsel.
46-23-205. Subpoenas — issuance, service.
46-23-206. Enforcement of subpoenas by court.
46-23-207. Penalty for disobedience.
46-23-208 and 46-23-209 reserved.
46-23-210. Medical parole.
46-23-211 through 46-23-214 reserved.
46-23-215. Conditions of parole.
46-23-216. Duration of parole.
46-23-217. Service of term for additional crime.
46-23-218. Authority of board to adopt rules.

Part 3 — Executive Clemency

46-23-301. Cases of executive clemency — application for clemency — definitions.
46-23-302. Order for hearing on application for executive clemency.
46-23-303. Publication of order.
46-23-304. Proof of publication.
46-23-305. When publication not necessary.
46-23-306. Record of hearing.
46-23-307. Decision of board.
46-23-308 through 46-23-314 reserved.
46-23-315. Authority of governor to grant respite — application.
46-23-316. Governor's report to legislature.

Part 4 — Supervised Release Program

46-23-401. Definitions.
46-23-402 through 46-23-404. Repealed.
46-23-405. Establishing program — rules.
46-23-406. Repealed.
46-23-407 through 46-23-410 reserved.
46-23-411. Application to participate — eligibility.
46-23-412. Board's action on application.
46-23-413 through 46-23-415. Repealed.
46-23-416 through 46-23-420 reserved.
46-23-421. Responsibility of department and supervising agent.
46-23-422. Violation of supervised release program by prisoner — revocation.
46-23-423 through 46-23-425. Repealed.
46-23-426. Escape.

Part 5 — Registration of Sexual Offenders

46-23-501. Short title.
46-23-502. Definitions.
46-23-503. Release of sexual offender from place of confinement — duties of official in charge.
46-23-504. Duty to register.
46-23-505. Change of address — duty to inform.
46-23-506. Duration of registration.
46-23-507. Penalty.

Parts 6 through 9 reserved

Part 10 — Supervision of Probationers and Parolees

46-23-1001. Definitions.
46-23-1002. Powers of the department.
46-23-1003. Qualifications of probation and parole officers.

46-23-1004. Duties of the department.
46-23-1005 through 46-23-1010 reserved.
46-23-1011. Supervision on probation.
46-23-1012. Arrest when violations of probation alleged.
46-23-1013. Action of court after arrest.
46-23-1014. When probationer considered a fugitive.
46-23-1015 through 46-23-1020 reserved.
46-23-1021. Supervision on parole.
46-23-1022. Parole services.
46-23-1023. Arrest of alleged parole violator.
46-23-1024. Initial hearing after arrest.
46-23-1025. Report to and action by the board.
46-23-1026. When prisoner considered a fugitive.

Part 11 — Interstate Supervision of Probation and Parole

46-23-1101. Short title.
46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms.
46-23-1103. Arranging for sending state to retake or reincarcerate violator.
46-23-1104. Hearing officers — who eligible.
46-23-1105. Rights of parolee or probationer regarding hearing.
46-23-1106. Hearing in another state — record, effect.

Chapter Cross-References

Effect of executive reorganization, 2-15-131 through 2-15-137.

Jail work release program, Title 46, ch. 18, part 7.

Part 1

General Provisions — Board of Pardons

46-23-101. Short title. Parts 1, 2, 3, and 10 of this chapter shall be known and may be cited as the "Parole and Executive Clemency Act".

History: En. Sec. 1, Ch. 153, L. 1955; Sec. 94-9821, R.C.M. 1947; redes. 95-3203 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 2, Ch. 333, L. 1975; R.C.M. 1947, 95-3203.

46-23-102. Cases of juveniles excluded. The provisions of parts 1, 2, 3, and 10 of this chapter shall not apply to probation in the juvenile courts or to parole from state institutions for juveniles.

History: En. Sec. 30, Ch. 153, L. 1955; Sec. 94-9850, R.C.M. 1947; redes. 95-3232 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3232.

46-23-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(3) "Executive clemency" refers to the powers of the governor as provided by section 12 of Article VI of the constitution of Montana.

(4) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department of corrections and human services.

History: En. Sec. 3, Ch. 153, L. 1955; Sec. 94-9823, R.C.M. 1947; amd. Sec. 1, Ch. 73, L. 1973; redes. 95-3205 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 82, Ch. 120, L. 1974; amd. Sec. 5, Ch. 333, L. 1975; R.C.M. 1947, 95-3205; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

46-23-104. Board of pardons. (1) The board of pardons is responsible for executive clemency and parole as provided in this chapter.

(2) The board shall meet monthly, and at such other times as the board considers necessary, at the state prison.

(3) The principal office of the board shall be in Deer Lodge.

(4) The board may designate one of its members, one of its staff members, or any other adult correctional releasing authority to conduct interviews relative to:

(a) parole eligibility;

(b) plans for release on parole; or

(c) revocation hearings.

History: En. Sec. 2, Ch. 153, L. 1955; Sec. 94-9822, R.C.M. 1947; redes. 95-3204 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 81, Ch. 120, L. 1974; amd. Sec. 3, Ch. 333, L. 1975; R.C.M. 1947, 95-3204; amd. Sec. 1, Ch. 234, L. 1981; amd. Sec. 1, Ch. 300, L. 1987.

Cross-References

Board of Pardons established, 2-15-2302.

46-23-105. Legal adviser. The board may appoint any qualified attorney or the attorney general to act as its legal adviser and represent it in all proceedings whenever so requested by the board.

History: En. Sec. 7, Ch. 153, L. 1955; Sec. 94-9827, R.C.M. 1947; redes. 95-3209 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3209.

46-23-106. Information from courts to board. It shall be the duty of the court disposing of any criminal case to cause to be transmitted to the board of pardons statistical data in accordance with regulations issued by the board regarding all dispositions of defendants whether found guilty or discharged.

History: En. 95-2210 by Sec. 1, Ch. 196, L. 1967; R.C.M. 1947, 95-2210.

46-23-107. Orders of board — reviewability. Decisions of the board must be by majority vote. The orders of the board are not reviewable.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(1); amd. Sec. 1, Ch. 188, L. 1989.

46-23-108. Records and reports — confidentiality. The department shall keep a record of the board's acts and decisions available to the public. However, all social records, including the presentence report, the preparole report, and the supervision history obtained in the discharge of official duty by the department, are confidential and may not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may, in its discretion, when the best interests or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the social record or any parts thereof by the prisoner or his attorney.

History: En. Sec. 4, Ch. 153, L. 1955; amd. Sec. 42, Ch. 93, L. 1969; Sec. 94-9824, R.C.M. 1947; redes. 95-3206 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 83, Ch. 120, L. 1974; amd. Sec. 6, Ch. 333, L. 1975; amd. Sec. 59, Ch. 184, L. 1977; R.C.M. 1947, 95-3206(2); amd. Sec. 27, Ch. 116, L. 1979.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Criminal justice information, Title 44, ch. 5.

Disclosure of criminal justice information, 44-5-104.

Part 2

Granting of Parole

46-23-201. Prisoners eligible for nonmedical parole. (1) Subject to the restrictions contained in subsections (2) through (5), the board may release on nonmedical parole by appropriate order any person confined in the Montana state prison or the women's correction center, except persons under sentence of death and persons serving sentences imposed under 46-18-202(2), when in its opinion there is reasonable probability that the prisoner can be released without detriment to the prisoner or to the community.

(2) A convict serving a time sentence may not be paroled under this section until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105; except as provided in subsection (3), a convict designated as a nondangerous offender under 46-18-404 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 53-30-105. Any offender serving a time sentence may be paroled after he has served, upon his term of sentence, 17 ½ years.

(3) A convict serving a time sentence under 45-9-109 may not be paroled until he has served at least one-half of his full term, less the good time allowance provided for in 53-30-105.

(4) A convict serving a life sentence may not be paroled under this section until he has served 30 years, less the good time allowance provided for in 53-30-105.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(6) Whenever the department of corrections and human services certifies to the board that the population at either the male or female correctional

facility has exceeded its designed capacity for 30 consecutive days, the board shall consider the respective male or female inmates under the jurisdiction of the department eligible for parole 120 days prior to the eligibility dates provided for in subsections (2) through (4).

(7) Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana state prison, the provisions of subsection (6) do not apply.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(1), (2); amd. Secs. 1, 2, Ch. 235, L. 1983; amd. Sec. 1, Ch. 451, L. 1985; amd. Sec. 2, Ch. 188, L. 1989; amd. Sec. 2, Ch. 248, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 315, L. 1991; amd. Sec. 3, Ch. 519, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: Chapter 248 in (1), near beginning before "parole", inserted "nonmedical"; and in (2), (4), and (5), near beginning, inserted "under this section".

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 315 in (6), near beginning, substituted "either the male or female correctional facility has exceeded" for "the Montana state prison exceeds", near middle, after "capacity", deleted "of 744 by 96 inmates or that the population at the women's correction center exceeds its design capacity of 35 inmates and that the prison or the center has exceeded its capacity for a period of more than", after "30" inserted "consecutive", and near end, after "consider", substituted "the respective male or female inmates under the jurisdiction of the department" for "convicts in the institution in which the design capacity has been exceeded"; and made minor changes in style.

Chapter 519 in (2), after "except", substituted "as provided in subsection (3)" for "that"; inserted (3) requiring a person convicted of criminal sale of dangerous drugs on or near school property to serve at least one-half of full sentence less good time allowance prior to parole; in (6) and (7) changed internal reference; and made minor changes in style.

46-23-202. Investigation of prisoner by board. (1) Within the 2 months prior to his official parole eligibility date, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of any physical and mental examinations which have been made.

(2) Before ordering the parole of any prisoner the board shall interview him.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(3); amd. Sec. 1, Ch. 45, L. 1983.

46-23-203. Information from prison officials. It shall be the duty of all prison officials to grant to the members of the board or its properly accredited representatives access at all reasonable times to any prisoner over whom the board has jurisdiction under parts 1, 2, 3, and 10 of this chapter, to provide for the board or such representatives facilities for communicating with and observing such prisoner, and to furnish to the board such reports as the board shall require concerning the conduct and character of any prisoner in their custody and any other facts deemed by the board pertinent in determining whether such prisoner shall be paroled.

History: **En. Sec. 14, Ch. 153, L. 1955; Sec. 94-9834, R.C.M. 1947; redes. 95-3216 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3216.**

46-23-204. All persons may be heard — counsel. The board shall be required to hear oral statements from all persons desiring to be heard before the board, and any person may be represented by counsel, provided that the board shall have the power to regulate procedure at all hearings.

History: **En. Sec. 15, Ch. 153, L. 1955; Sec. 94-9835, R.C.M. 1947; redes. 95-3217 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3217.**

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel, 46-8-101.

Court to advise defendant of rights, 46-12-210.

Right to counsel — sentencing hearing, 46-18-223.

Court to advise defendant of rights — extradition proceedings, 46-30-217.

46-23-205. Subpoenas — issuance, service. (1) The board shall have the power to issue subpoenas compelling the attendance of such witnesses and the production of such records, books, papers, and documents as it may deem necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by the board or any member thereof.

(2) Subpoenas so issued may be served by any sheriff, constable, police officer, parole and probation officer, or other law enforcement officer.

History: **En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).**

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

46-23-206. Enforcement of subpoenas by court. In case of contumacy by or refusal of any person to obey a subpoena issued to such person, any member of the board or duly authorized representative of any of them may make application to any court of record of this state and such court shall have jurisdiction to issue to such person an order requiring such person to appear before the board and there to produce evidence if so ordered or there to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by said court as a contempt thereof.

History: **En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).**

46-23-207. Penalty for disobedience. Any person who shall without just cause fail or refuse to attend and testify, to answer any lawful inquiry, or to produce records, books, papers, and other documents if it is in his power to do so in obedience to a subpoena of the board or any member thereof shall be punished by a fine of not more than $200 or by imprisonment for not longer than 60 days or by both such fine and imprisonment. Each day such violation continues shall be deemed to be a separate offense.

History: **En. Sec. 16, Ch. 153, L. 1955; Sec. 94-9836, R.C.M. 1947; redes. 95-3218 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3218(part).**

46-23-208 and 46-23-209 reserved.

46-23-210. Medical parole. (1) The board may release on medical parole by appropriate order a person placed in a correctional institution or program, except a person under sentence of death. To be eligible for a medical parole, a person must have an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The diagnosis must include:

(a) a determination that the person suffers from an incapacitating physical condition, disease, or syndrome that renders the person incapable of presenting a danger to society;

(b) a description of the physical condition, disease, or syndrome and a detailed description of the person's physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the physical condition, disease, or syndrome and the extent of any potential recovery.

(2) The diagnosis must be reviewed and accepted by the department before the board may consider granting a medical parole.

(3) The board shall require as a condition of medical parole that the person agree to placement in an environment chosen by the department during the parole period, including but not limited to a hospital, nursing home, or family home. The board may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's physical capacity has improved to the extent that the person poses a possible detriment to society, the board may revoke the parole and return the person to the custody of the department.

(4) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's parent, grandparent, child, or sibling by submitting the request in writing to the administrator of the correctional institution in which the person is incarcerated.

(5) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(6) Sections 46-23-203 through 46-23-207 and 46-23-215 through 46-23-218 apply to nonmedical parole.

History: En. Sec. 1, Ch. 248, L. 1991.

46-23-211 through 46-23-214 reserved.

46-23-215. Conditions of parole. (1) Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board.

(2) When an order for parole is issued, it shall recite the conditions thereof. An order for parole or any parole agreement signed by a prisoner may contain a clause waiving extradition.

(3) Whenever a prisoner in the Montana state prison has been approved for parole on condition that he obtain employment or secure suitable living arrangements or on any other condition that is difficult to fulfill while incarcerated, the warden may grant him a furlough, not to exceed 10 days, for purposes of fulfilling the condition. While on such furlough, the prisoner

remains in the legal custody of the prison and is subject to all other conditions recited by the board.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(4); amd. Sec. 1, Ch. 1, Sp. L. 1982; amd. Sec. 3, Ch. 392, L. 1987.

46-23-216. Duration of parole. (1) A prisoner on parole who has served one-half of his term or terms, less the good time allowance, or a nondangerous offender on parole who has served one-quarter of his term or terms, less the good time allowance, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less the good time allowance as provided for in 53-30-105.

(2) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in 46-23-1023 through 46-23-1026 relating to a prisoner who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a prisoner on parole or conditional release has performed the obligations of his release, the board shall make a final order or discharge and issue a certificate of discharge to the prisoner.

History: (1)En. Sec. 13, Ch. 153, L. 1955; Sec. 94-9833, R.C.M. 1947; redes. 95-3215 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 87, Ch. 120, L. 1974; amd. Sec. 4, Ch. 312, L. 1975; amd. Sec. 61, Ch. 184, L. 1977; amd. Sec. 4, Ch. 340, L. 1977; Sec. 95-3215, R.C.M. 1947, 95-3215; (2)En. Sec. 20, Ch. 153, L. 1955; Sec. 94-9840, R.C.M. 1947; redes. 95-3222 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3222, R.C.M. 1947; R.C.M. 1947, 95-3215, 95-3222.

Cross-References

Designation as nondangerous offender for purposes of parole eligibility, 46-18-404.

46-23-217. Service of term for additional crime. A prisoner who commits a crime while imprisoned in the state prison or while released on parole or under the supervised release program and who is convicted and sentenced for the crime shall serve the sentence consecutively with the remainder of the original sentence as provided in 46-18-401. However, the prisoner remains eligible for parole consideration under 46-23-201 in regard to the original sentence. If paroled from the original sentence, the prisoner shall begin serving the subsequent sentence as provided in 46-18-401.

History: En. Sec. 19, Ch. 153, L. 1955; Sec. 94-9839, R.C.M. 1947; redes. 95-3221 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3221; amd. Sec. 28, Ch. 116, L. 1979; amd. Sec. 3, Ch. 188, L. 1989.

46-23-218. Authority of board to adopt rules. The board may adopt any other rules it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, and conditions to be imposed upon parolees.

History: En. Sec. 12, Ch. 153, L. 1955; Sec. 94-9832, R.C.M. 1947; redes. 95-3214 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 86, Ch. 120, L. 1974; amd. Sec. 3, Ch. 312, L. 1975; amd. Sec. 60, Ch. 184, L. 1977; amd. Sec. 3, Ch. 340, L. 1977; amd. Sec. 3, Ch. 580, L. 1977; R.C.M. 1947, 95-3214(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Executive Clemency

Part Cross-References

Pardons, Art. VI, sec. 12, Mont. Const.

46-23-301. Cases of executive clemency — application for clemency — definitions. (1) (a) "Clemency" means kindness, mercy, or leniency that may be exercised by the governor towards a convicted person. The governor may grant clemency in the form of:

(i) the remission of fines or forfeitures;

(ii) the commutation of a sentence to one which is less severe;

(iii) respite; or

(iv) pardon.

(b) "Pardon" means a declaration of record that an individual is to be relieved of all legal consequences of a prior conviction.

(2) A person convicted of a crime need not exhaust judicial or administrative remedies before he files an application for clemency. The board shall consider cases of executive clemency only upon application. All applications for executive clemency must be made to the board. Applications may be filed only by the person convicted of the crime, by his attorney acting on his behalf and with his consent, or by a court-appointed next friend, guardian, or conservator acting on his behalf. The board shall cause an investigation to be made of and base any recommendation it makes on:

(a) all the circumstances surrounding the crime for which the applicant was convicted; and

(b) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.

(3) The board shall advise the governor and recommend action to be taken. The board may recommend that clemency be granted or denied. In noncapital cases, if the board recommends that clemency be denied, the application must not be forwarded to the governor and the governor may not take action on the case. In capital cases, the board shall transmit the application and either a recommendation that clemency be granted or a recommendation that clemency be denied to the governor. The governor is not bound by any recommendation of the board, but he shall review the record of the hearing and the board's recommendation before he grants or denies clemency. The governor has the final authority to grant or deny clemency in those cases forwarded to him.

History: En. Sec. 21, Ch. 153, L. 1955; Sec. 94-9841, R.C.M. 1947; amd. Sec. 2, Ch. 73, L. 1973; redes. 95-3223 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3223; amd. Sec. 1, Ch. 561, L. 1989.

46-23-302. Order for hearing on application for executive clemency. After the board has duly considered an application for executive clemency and has by majority vote favored a hearing, it must pass an order in substance as follows:

"Whereas, the Board of Pardons has officially received an application for executive clemency concerning ...., a convict confined in the state prison (or to one ...., who has been found guilty of an offense committed against the laws of the state), who was convicted of the crime of .... committed at ...., in the county of ...., State of Montana, on the .... day of ...., 19.., and sentenced for a term of .... years.

Therefore, be it ordered that ...., the .... day of ...., 19.., be set apart for the consideration of said executive clemency matter; and all persons having an interest therein desiring to be heard either for or against the granting of the pardon, commutation, restoration of citizenship, or remission or suspension of fine or forfeiture are hereby notified to be present at .... o'clock of said day, at .....

Further, ordered that a copy of this order be printed and published in the .... (here insert name of some newspaper of general circulation in the county where the crime was committed), a daily (or weekly) newspaper printed and published at ...., in the county of ...., once each week for 2 weeks beginning ...., 19.., and ending ....."

History: En. Sec. 22, Ch. 153, L. 1955; Sec. 94-9842, R.C.M. 1947; amd. Sec. 3, Ch. 73, L. 1973; redes. 95-3224 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3224; amd. Sec. 2, Ch. 561, L. 1989.

46-23-303. Publication of order. The board must cause a copy of such order to be published in the newspaper therein designated at least once a week for 2 weeks prior to the hearing and, at the same time, cause to be deposited in the post office at the seat of government, postpaid, a copy of said order and notice addressed to the district judge, county attorney, and sheriff, respectively, of the county where the crime was committed and in like manner mail a copy of the order to the applicant.

History: En. Sec. 23, Ch. 153, L. 1955; Sec. 94-9843, R.C.M. 1947; redes. 95-3225 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3225; amd. Sec. 3, Ch. 561, L. 1989.

46-23-304. Proof of publication. Prior to the time set for hearing, proof of the publication of notice must be made by the publisher or managing agent.

History: En. Sec. 24, Ch. 153, L. 1955; Sec. 94-9844, R.C.M. 1947; redes. 95-3226 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3226.

46-23-305. When publication not necessary. No publication need be made as provided in 46-23-302, 46-23-303, and 46-23-304 in the following cases:

(1) when there is imminent danger of the death of the person convicted or imprisoned;

(2) when the term of imprisonment of the applicant is within 10 days of its expiration.

History: En. Sec. 26, Ch. 153, L. 1955; Sec. 94-9846, R.C.M. 1947; amd. and redes. 95-3228 by Sec. 28, Ch. 513, L. 1973; R.C.M. 1947, 95-3228.

46-23-306. Record of hearing. At the hearing the board must cause to be kept a record showing:

(1) the names of all persons appearing before the board on behalf of the person seeking clemency from the governor;

(2) the names of all persons appearing before the board in opposition to the granting of the same;

(3) the testimony of all persons giving evidence before the board;

(4) that the affidavit and return from the printer of the publication of the notice and order of hearing was on file prior to the hearing.

History: En. Sec. 25, Ch. 153, L. 1955; Sec. 94-9845, R.C.M. 1947; redes. 95-3227 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3227; amd. Sec. 29, Ch. 116, L. 1979.

46-23-307. Decision of board. Within 30 days after the hearing of any capital case or in noncapital cases where the decision is made to recommend clemency be granted, the board must make a decision in writing, and if such decision be made to recommend executive clemency, the copy of the decision together with all papers used in each case shall be immediately transmitted to the governor.

History: En. Sec. 27, Ch. 153, L. 1955; Sec. 94-9847, R.C.M. 1947; redes. 95-3229 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3229; amd. Sec. 4, Ch. 561, L. 1989.

46-23-308 through 46-23-314 reserved.

46-23-315. Authority of governor to grant respite — application. The governor has the power to grant respites after conviction and judgment for any offenses committed against the criminal laws of the state for such time as he thinks proper. The governor may grant a respite upon application of a person authorized to apply for executive clemency and prior to any review or recommendation by the board of pardons. A respite must be of temporary duration for a definite period of time. Any respite that is granted that stays the execution of a death warrant has the effect of postponing the execution of the warrant. In such a case, if clemency is not granted, the death warrant is again in effect at the expiration of the period of respite and the execution must take place on the date of expiration of the respite.

History: En. Sec. 28, Ch. 153, L. 1955; Sec. 94-9848, R.C.M. 1947; redes. 95-3230 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3230; amd. Sec. 5, Ch. 561, L. 1989.

46-23-316. Governor's report to legislature. The governor shall, as provided in 5-11-210, report to the legislature each case of remission of fine or forfeiture, respite, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of which he was convicted, the sentence and its date, the date of remission, commutation, pardon, or respite, with the reason for granting the same, and the objection, if any, of any of the members of the board made thereto.

History: En. Sec. 29, Ch. 153, L. 1955; Sec. 94-9849, R.C.M. 1947; redes. 95-3231 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3231; amd. Sec. 6, Ch. 561, L. 1989; amd. Sec. 37, Ch. 112, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning, after "governor", substituted "shall, as provided in 5-11-210, report" for "must communicate" and after "legislature" deleted "at each regular session". Amendment effective March 20, 1991.

Part 4

Supervised Release Program

46-23-401. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Applicant" means any prisoner who is eligible under 46-23-411 and who signs an application to participate in the supervised release program.

(2) "Board" means the board of pardons provided for in 2-15-2302.

(3) "Department" means the department of corrections and human services provided for in 2-15-2301.

(4) "Prisoner" means a person sentenced by a state district court to a term of confinement in the state prison.

(5) "State prison" means the Montana state prison at Deer Lodge or any adult correctional facility designated by the department.

(6) "Sponsor" means any federal, state, county, local, or private agency, Indian tribe and reservation, or any person, group, association, or organization approved by the department to undertake the supervision of prisoners participating in the supervised release program.

(7) "Supervising agent" means a probation and parole officer of the department.

History: En. Sec. 2, Ch. 288, L. 1969; amd. Sec. 92, Ch. 120, L. 1974; amd. Sec. 2, Ch. 496, L. 1975; R.C.M. 1947, 95-2218; amd. Sec. 1, Ch. 583, L. 1981; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

46-23-402 through 46-23-404. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-402. En. Sec. 1, Ch. 288, L. 1969; amd. Sec. 1, Ch. 496, L. 1975; R.C.M. 1947, 95-2217; amd. Sec. 30, Ch. 116, L. 1979; amd. Sec. 1, Ch. 635, L. 1979.

46-23-403. En. Sec. 8, Ch. 288, L. 1969; amd. Sec. 8, Ch. 496, L. 1975; amd. Sec. 39, Ch. 184, L. 1977; R.C.M. 1947, 95-2224.

46-23-404. En. Sec. 9, Ch. 288, L. 1969; R.C.M. 1947, 95-2225.

46-23-405. Establishing program — rules. The department is authorized and directed to establish a supervised release program and make rules in accordance with Title 2, chapter 4 (the Montana Administrative Procedure Act), to implement and control the same. Rules shall include guidelines for:

(1) prisoner eligibility;

(2) prisoner participation in a recognized educational, treatment, or training program or work program in conjunction with any of the above programs;

(3) approval of the sponsor;

(4) review of a board decision to deny an applicant admittance into the program;

(5) supervision of the prisoner by or under the direction of a supervising agent while he is in the program;

(6) conducting revocation hearings;

(7) establishment of a program by the prisoner; and

(8) any other provisions necessary to implement this part.

History: En. Secs. 3, 7, Ch. 288, L. 1969; amd. Secs. 3, 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2219, 95-2223(1); amd. Sec. 2, Ch. 635, L. 1979; amd. Sec. 2, Ch. 583, L. 1981.

46-23-406. Repealed. Sec. 13, Ch. 583, L. 1981.

History: En. Sec. 7, Ch. 288, L. 1969; amd. Sec. 7, Ch. 496, L. 1975; R.C.M. 1947, 95-2223(2).

46-23-407 through 46-23-410 reserved.

46-23-411. Application to participate — eligibility. (1) Any prisoner, except a prisoner serving a sentence imposed under 46-18-202(2), may make application to participate in the supervised release program if he has served at least one-half of the time required to be considered for parole and not more than 24 months remain before he is eligible for parole.

(2) Prisoners serving sentences with the restriction imposed under 46-18-202(2) are not eligible for participation in the program.

(3) In order to be accepted into the program, an applicant must qualify under the rules established by the department.

History: En. Sec. 4, Ch. 288, L. 1969; amd. Sec. 4, Ch. 496, L. 1975; amd. Sec. 2, Ch. 580, L. 1977; R.C.M. 1947, 95-2220; amd. Sec. 3, Ch. 635, L. 1979; amd. Sec. 3, Ch. 583, L. 1981; amd. Sec. 1, Ch. 445, L. 1989.

46-23-412. Board's action on application. The board shall approve or deny the application of each prisoner after careful study of the prisoner's release plans, criminal history, and all other pertinent case material. The board shall grant the applicant a hearing consistent with the procedural rules adopted by it for parole hearings pursuant to 46-23-218.

History: En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(1), (5); amd. Sec. 4, Ch. 583, L. 1981.

46-23-413 through 46-23-415. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-413. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(7).

46-23-414. En. Sec. 5, Ch. 288, L. 1969; amd. Sec. 5, Ch. 496, L. 1975; R.C.M. 1947, 95-2221(2) thru (4), (6).

46-23-415. En. Sec. 6, Ch. 288, L. 1969; amd. Sec. 6, Ch. 496, L. 1975; R.C.M. 1947, 95-2222.

46-23-416 through 46-23-420 reserved.

46-23-421. Responsibility of department and supervising agent. The department shall be responsible for the activities of a prisoner participating in a supervised release program under this part. The department may delegate jurisdictional supervision to a supervising agent who shall be responsible for the activities of the prisoner during his supervised release.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(1); amd. Sec. 5, Ch. 583, L. 1981.

Cross-References

Per diem payments for residential correctional programs, 53-1-501.

46-23-422. Violation of supervised release program by prisoner — revocation. (1) If a prisoner in a supervised release program violates a condition established for the program, the department may issue a warrant for his arrest. Upon a second or subsequent violation, the department shall issue a warrant for the prisoner's arrest.

(2) The prisoner shall be granted a hearing within a reasonable time on or near the site of the alleged violation to determine whether a violation of the supervised release conditions occurred. The prisoner may be represented by counsel at the hearing at his own expense. The hearing shall be conducted by a hearing officer of the department. The prisoner shall have all opportunities provided under 46-23-1024 and 46-23-1025 pertaining to on-site hearings for parole revocation. If probable cause is established that a violation of the supervised release has occurred, the prisoner shall be returned to the state prison.

(3) Within a reasonable time after the prisoner's return to the state prison, the board shall conduct a revocation proceeding in accordance with rules established under 46-23-405.

(4) If the terms of the prisoner's release have not been violated, the prisoner's case shall be assigned to a supervising agent and a new supervised release program shall be worked out.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(2); amd. Sec. 4, Ch. 635, L. 1979; amd. Sec. 2, Ch. 328, L. 1981; amd. Sec. 6, Ch. 583, L. 1981.

46-23-423 through 46-23-425. Repealed. Sec. 13, Ch. 583, L. 1981.

Compiler's Comments

Histories of Repealed Sections:

46-23-423. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(3).

46-23-424. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(4).

46-23-425. En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(5); amd. Sec. 5, Ch. 635, L. 1979.

46-23-426. Escape. A person convicted of escape from a supervised release program is punishable as provided in 45-7-306. A person convicted of such an escape and sentenced therefor shall serve such sentence consecutively with the remainder of the original sentence as provided in 46-18-401.

History: En. 95-2226.1 by Sec. 9, Ch. 496, L. 1975; R.C.M. 1947, 95-2226.1(6); amd. Sec. 7, Ch. 583, L. 1981.

Part 5

Registration of Sexual Offenders

Part Cross-References

Duties of Court and Department upon release of sexual offender, 46-18-254.

Employment restrictions — sexual offenders, 46-18-255.

46-23-501. Short title. Sections 46-18-254, 46-18-255, and this part may be cited as the "Sexual Offender Registration Act".

History: En. Sec. 1, Ch. 293, L. 1989.

46-23-502. Definitions. As used in 46-18-254, 46-18-255, and this part, the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Sexual offender" means a person who has been convicted of a sexual offense.

(3) "Sexual offense" means:

(a) any violation of 45-5-502(3), 45-5-503, 45-5-505, 45-5-507 (unless the act occurred between two consenting persons 16 years of age or older), or 45-5-625; or

(b) any violation of a law of another state or the federal government reasonably equivalent to a violation listed in subsection (3)(a).

History: En. Sec. 2, Ch. 293, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

46-23-503. Release of sexual offender from place of confinement — duties of official in charge. A sexual offender who is released from the custody of the department of corrections and human services or the department of family services must be informed in writing prior to release of his duty to register under 46-18-254, 46-18-255, and this part by the official in charge of the place of confinement. The official shall obtain the address where the person expects to reside upon his release and report the address to the department of corrections and human services. The department shall inform the appropriate law enforcement agency having local jurisdiction where the person expects to reside.

History: En. Sec. 4, Ch. 293, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

46-23-504. Duty to register. A sexual offender shall, within 14 days of coming into a county in which he resides or is temporarily domiciled, register, as required under 46-18-254, 46-18-255, and this part, with the chief of police of the municipality or the sheriff of the county if he resides in an area other than a municipality.

History: En. Sec. 5, Ch. 293, L. 1989.

46-23-505. Change of address — duty to inform. If a person required to register under 46-18-254, 46-18-255, and this part changes his residence, he shall within 10 days give written notification of his new address to the law enforcement agency with whom he last registered. The law enforcement agency shall, within 3 days after receipt of such information, forward it to the department and the local law enforcement agency having jurisdiction over the new place of residence.

History: **En. Sec. 6, Ch. 293, L. 1989.**

46-23-506. Duration of registration. (1) A person required to register under 46-18-254, 46-18-255, and this part shall comply with 46-18-254, 46-18-255, and this part for a period of 10 years after conviction, if not imprisoned during that period. If a person required to register under 46-18-254, 46-18-255, and this part is imprisoned during the initial 10-year period, he shall comply with the provisions of 46-18-254, 46-18-255, and this part for a period of 10 years after release from prison.

(2) A convicted sexual offender's duty to register under 46-18-254, 46-18-255, and this part terminates at the expiration of 10 years from the date of initial registration, provided that during the 10-year period the convicted sexual offender does not again become subject to 46-18-254, 46-18-255, and this part.

History: **En. Sec. 7, Ch. 293, L. 1989.**

46-23-507. Penalty. A sexual offender who knowingly fails to register under 46-18-254, 46-18-255, and this part may be sentenced to a term of imprisonment of not less than 90 days or a fine not to exceed $250, or both.

History: **En. Sec. 8, Ch. 293, L. 1989.**

Parts 6 through 9 reserved

Part 10

Supervision of Probationers and Parolees

46-23-1001. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Board" means the board of pardons provided for in 2-15-2302.

(2) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(3) "Parole" means the release to the community of a prisoner by the decision of the board prior to the expiration of his term, subject to conditions imposed by the board and subject to supervision of the department.

(4) "Probation" means the release by the court without imprisonment, except as otherwise provided by law, of a defendant found guilty of a crime upon verdict or plea, subject to conditions imposed by the court and subject to the supervision of the department upon direction of the court.

History: **En. 95-3301 by Sec. 7, Ch. 333, L. 1975; R.C.M. 1947, 95-3301; amd. Sec. 1, Ch. 262, L. 1991.**

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

46-23-1002. Powers of the department. The department may:

(1) appoint probation and parole officers and other employees necessary to administer this part;

(2) authorize probation and parole officers to carry firearms, including concealed firearms, when necessary. The department shall adopt rules establishing firearms training requirements and procedures for authorizing the carrying of firearms.

(3) adopt rules for the conduct of persons placed on parole or probation, except that the department may not make any rule conflicting with conditions of parole imposed by the board or conditions of probation imposed by a court.

History: En. 95-3302 by Sec. 8, Ch. 333, L. 1975; R.C.M. 1947, 95-3302; amd. Sec. 1, Ch. 639, L. 1989.

46-23-1003. Qualifications of probation and parole officers. (1) Probation and parole officers shall have at least a college degree and some formal training in behavioral sciences. Exceptions to this rule must be approved by the department. Related work experience in the areas listed in 2-15-2302(2) may be substituted for educational requirements at the rate of 1 year of experience for 9 months formal education if approved by the department. All present employees will be exempt from this requirement but are encouraged to further their education at the earliest opportunity.

(2) Each probation and parole officer must, through a source approved by his employer, obtain 16 hours a year of training in subjects relating to the powers and duties of probation officers. In addition, each probation and parole officer must receive training in accordance with standards adopted by the board of crime control, as provided in 44-4-301. The training must be at the Montana law enforcement academy unless the board finds that training at some other place is more appropriate.

History: En. 95-3302.1 by Sec. 4, Ch. 333, L. 1975; R.C.M. 1947, 95-3302.1; amd. Sec. 2, Ch. 544, L. 1987; amd. Sec. 2, Ch. 809, L. 1991.

Compiler's Comments

1991 Amendment: Inserted second and third sentences in (2) providing that each probation and parole officer must receive training and that training must be at the law enforcement academy.

46-23-1004. Duties of the department. The department is responsible for any investigation and supervision requested by the board or the courts. The department shall:

(1) divide the state into districts and assign probation and parole officers to serve in these districts and courts;

(2) obtain any necessary office quarters for the staff in each district;

(3) assign the secretarial, bookkeeping, and accounting work to the clerical employees, including receipt and disbursement of money;

(4) direct the work of the probation and parole officers and other employees;

(5) formulate methods of investigation, supervision, recordkeeping, and reports;

(6) conduct training courses for the staff;

(7) cooperate with all agencies, public and private, which are concerned with the treatment or welfare of persons on probation or parole;

(8) administer the interstate compact for the supervision of parolees and probationers.

History: En. Sec. 8, Ch. 153, L. 1955; Sec. 94-9828, R.C.M. 1947; redes. 95-3210 by Sec. 29, Ch. 513, L. 1973; amd. Sec. 85, Ch. 120, L. 1974; Sec. 95-3210, R.C.M. 1947; amd. and redes. 95-3303 by Sec. 9, Ch. 333, L. 1975; R.C.M. 1947, 95-3303.

46-23-1005 through 46-23-1010 reserved.

46-23-1011. Supervision on probation. (1) The department shall supervise persons during their probation period in accord with the conditions set by a court.

(2) A copy of the conditions of probation shall be signed by the probationer and given to him and his probation and parole officer, who shall report on his progress under rules of the court.

(3) The probation and parole officer shall regularly advise and consult with the probationer to encourage him to improve his condition and conduct and inform him of restoration of his rights on successful completion of his sentence.

(4) The probation and parole officer may recommend and a court may modify any condition of probation or suspension of sentence at any time. Notice shall be given to the probation and parole officer before any condition is modified, and he shall be given an opportunity to present his ideas or recommendations on any modification. A copy of a modification of conditions shall be delivered to the probation and parole officer and the probationer.

(5) The probation and parole officer shall keep records as the department or the court may require.

(6) (a) Upon recommendation of the probation and parole officer, a court may conditionally discharge a probationer from supervision before expiration of his sentence if the court determines that a conditional discharge from supervision is in the best interests of the probationer and society.

(b) Nothing in subsection (6)(a) prohibits a court from revoking the order suspending execution or deferring imposition of sentence, as provided in 46-18-203, for a probationer who has been conditionally discharged from supervision.

History: En. 95-3304 by Sec. 10, Ch. 333, L. 1975; R.C.M. 1947, 95-3304; amd. Sec. 1, Ch. 195, L. 1989.

46-23-1012. Arrest when violations of probation alleged. (1) At any time during probation or suspension of sentence a court may issue a warrant for the arrest of the defendant for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the defendant. The warrant shall authorize all officers named therein to return such defendant to the custody of the court or to any suitable detention facility designated by the court.

(2) Any probation and parole officer may arrest such defendant without a warrant or may deputize any other officer with power of arrest to do so by giving him a written statement setting forth that the defendant has, in the judgment of said probation and parole officer, violated the conditions of his release. Such written statement delivered with the defendant by the arresting officer to the official in charge of a county jail or other place of detention shall be sufficient warrant for the detention of the defendant. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Provisions regarding release on bail of persons charged with crime shall be applicable to the defendants arrested under these provisions.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1013. Action of court after arrest. (1) Upon such arrest and detention, the probation and parole officer shall immediately notify the court with jurisdiction over such prisoner and shall submit in writing a report showing in what manner the defendant has violated the conditions of release. Thereupon, or upon an arrest by warrant as herein provided, the court shall cause the defendant to be brought before it without unnecessary delay for a hearing on the violation charged. The hearing may be informal or summary.

(2) If the violation is established, the court may continue to revoke the probation or suspension of sentence and may require him to serve the sentence imposed or any lesser sentence and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(3) If it shall appear that he has violated the provisions of his release, whether the time from the issuing of such warrant to the date of his arrest or any part of it shall be counted as time served on probation or suspended sentence shall be determined by the court.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1014. When probationer considered a fugitive. A probationer or defendant under suspension of sentence for whose return a warrant has been issued by the court shall after the issuance of the warrant, if it is found that such warrant cannot be served, be deemed a fugitive from or to have fled from justice.

History: En. Sec. 11, Ch. 153, L. 1955; Sec. 94-9831, R.C.M. 1947; redes. 95-3213 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3213, R.C.M. 1947; redes. 95-3305 by Sec. 15, Ch. 333, L. 1975; R.C.M. 1947, 95-3305(part).

46-23-1015 through 46-23-1020 reserved.

46-23-1021. Supervision on parole. (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report

of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer, who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, and inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual.

(6) (a) Upon recommendation of the probation and parole officer, the board may conditionally discharge a parolee from supervision before expiration of his sentence if the board determines that a conditional discharge from supervision is in the best interests of the parolee and society.

(b) Nothing in subsection (6)(a) prohibits the board from revoking the parole, as provided in 46-23-1025, of a parolee who has been conditionally discharged from supervision.

History: En. 95-3306 by Sec. 11, Ch. 333, L. 1975; amd. Sec. 62, Ch. 184, L. 1977; R.C.M. 1947, 95-3306; amd. Sec. 2, Ch. 195, L. 1989.

46-23-1022. Parole services. (1) To assist parolees the department may, in addition to other services, provide the following:

(a) employment counseling, job placement, and assistance in residential placement;

(b) family and individual counseling and treatment placement;

(c) financial counseling;

(d) vocational and educational counseling and placement; and

(e) referral services to any other state or local agencies.

(2) The department may purchase necessary services for a parolee if they are otherwise unavailable and the parolee is unable to pay for them. It may assess all or part of the costs of such services to a parolee in accordance with his ability to pay for them.

History: En. 95-3307 by Sec. 12, Ch. 333, L. 1975; R.C.M. 1947, 95-3307.

46-23-1023. Arrest of alleged parole violator. (1) At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the released prisoner for violation of any of the conditions of release or a notice to appear to answer to a charge of violation. The notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return the prisoner to the actual custody of the penal institution from which he was released or to any other suitable detention facility designated by the department.

(2) Any probation and parole officer may arrest the prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of the probation and parole officer, violated the conditions of his release. The written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention shall be sufficient warrant for the

detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

(3) Pending hearing, as provided in 46-23-1024 and 46-23-1025, upon any charge of violation the prisoner may, if circumstances warrant, be incarcerated in the institution.

History: **En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(1).**

Cross-References

Duration of parole not to exceed maximum sentence — exception for fugitive, 46-23-216.

46-23-1024. Initial hearing after arrest. (1) After the arrest of the prisoner, a hearing shall be held within a reasonable time, unless the hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over the hearing. The hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of the hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(2) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses and position of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to him, the hearings officer shall determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as provided in 46-23-1025.

History: **En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(2).**

Cross-References

Furlough violation — on-site hearing for parole revocation, 46-23-422.

46-23-1025. Report to and action by the board. (1) If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. This report shall be accompanied by the findings of the hearings officer.

(2) Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged under such rules as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release or enter such other order as it may see fit.

(3) If it appears that he has violated the provisions of his release, the board shall determine whether the time from the issuing of the warrant to the date of his arrest or any part of it will be counted as time served under the sentence.

History: **En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(3).**

46-23-1026. When prisoner considered a fugitive. A prisoner for whose return a warrant has been issued shall, after the issuance of the warrant, if it is found that the warrant cannot be served, be considered a fugitive or to have fled from justice.

History: **En. Sec. 18, Ch. 153, L. 1955; Sec. 94-9838, R.C.M. 1947; amd. Sec. 1, Ch. 140, L. 1973; redes. 95-3220 by Sec. 29, Ch. 513, L. 1973; Sec. 95-3220, R.C.M. 1947; amd. and redes. 95-3308 by Sec. 13, Ch. 333, L. 1975; amd. Sec. 63, Ch. 184, L. 1977; R.C.M. 1947, 95-3308(4).**

Cross-References

Duration of parole not to exceed maximum sentence — exception for fugitive, 46-23-216.

Part 11

Interstate Supervision of Probation and Parole

Part Cross-References

Duty of Department of Corrections and Human Services to administer interstate compact, 46-23-1004.

46-23-1101. Short title. This part may be cited as the "Uniform Act for Out-of-State Parolee Supervision".

History: **En. Sec. 4, Ch. 189, L. 1937; Sec. 94-7902, R.C.M. 1947; redes. 95-3202 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3202.**

Cross-References

Extradition — violation of subdivision laws, 76-4-1246.

46-23-1102. Authority of governor to make interstate compact regarding probation and parole — terms. The governor of this state is hereby authorized and directed to enter into a compact on behalf of the state of Montana with any of the United States legally joining therein in the form substantially as follows:

A COMPACT. Entered into by and among the contracting states, signatories hereto, with the consent of the Congress of the United States of America, granted by an act entitled "An Act Granting the Consent of Congress to Any Two or More States to Enter into Agreements or Compacts for

Cooperative Effort and Mutual Assistance in the Prevention of Crime and for Other Purposes."

The contracting states solemnly agree:

(1) that it shall be competent for the duly constituted judicial and administrative authorities of a state party to this compact (herein called "sending state") to permit any person convicted of an offense within such state and placed on probation or released on parole to reside in any other state party to this compact (herein called "receiving state") while on probation or parole, if:

(a) such person is in fact a resident of or has his family residing within the receiving state and can obtain employment there;

(b) though not a resident of the receiving state and not having his family residing there, the receiving state consents to such person being sent there.

Before granting such permission, opportunity shall be granted to the receiving state to investigate the home and prospective employment of such person.

A resident of the receiving state, within the meaning of this section, is one who has been an actual inhabitant of such state continuously for more than 1 year prior to his coming to the sending state and has not resided within the sending state more than 6 continuous months immediately preceding the commission of the offense for which he has been convicted.

(2) that each receiving state will assume the duties of visitation and of supervision over the probationers or parolees of any sending state and in the exercise of those duties will be governed by the same standards that prevail for its own probationers and parolees;

(3) that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any person on probation or parole. For that purpose no formality will be required other than establishing the authority of the officer and the identity of the person to be retaken. All legal requirements to obtain extradition of fugitives from justice are hereby expressly waived on the part of states party hereto as to such persons. The decision of the sending state to retake a person on probation or parole shall be conclusive upon and not reviewable within the receiving state; provided, however, that if at the time when a state seeks to retake a probationer or parolee there should be pending against him within the receiving state any criminal charge or he should be suspected of having committed within such state a criminal offense, he shall not be retaken without the consent of the receiving state until discharged from prosecution or from imprisonment for such offense.

(4) that the duly accredited officers of the sending state will be permitted to transport prisoners being retaken through any and all states parties to this compact without interference;

(5) that the governor of each state may designate an officer who, acting jointly with like officers of other contracting states, if and when appointed, shall promulgate such rules and regulations as may be deemed necessary to more effectively carry out the terms of this compact;

(6) that this compact shall become operative immediately upon its ratification by any state as between it and any other state or states so ratifying. When ratified it shall have the full force and effect of law within

such state, the form of ratification to be in accordance with the laws of the ratifying state.

(7) that this compact shall continue in force and remain binding upon each ratifying state until renounced by it. The duties and obligations hereunder of a renouncing state shall continue as to parolees or probationers residing therein at the time of withdrawal until retaken or finally discharged by the sending state. Renunciation of this compact shall be by the same authority which ratified it, by sending 6 months' notice in writing of its intention to withdraw from the compact to the other states party hereto.

History: En. Sec. 1, Ch. 189, L. 1937; Sec. 94-7901, R.C.M. 1947; redes. 95-3201 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3201.

46-23-1103. Arranging for sending state to retake or reincarcerate violator. (1) Where supervision of a parolee or probationer is being administered pursuant to the interstate compact for the supervision of parolees and probationers, the appropriate judicial or administrative authorities in this state shall notify the compact administrator of the sending state whenever in their view consideration should be given to retaking or reincarceration for a parole or probation violation.

(2) Prior to the giving of any such notification, a hearing shall be held in accordance with this part within a reasonable time unless such hearing is waived by the parolee or probationer. Following termination of any such hearing, the appropriate officer or officers of this state shall, as soon as practicable, report to the sending state, furnish a copy of the hearing record, and make recommendations regarding the disposition to be made of the parolee or probationer by the sending state.

(3) Pending any proceeding pursuant to this section, the appropriate officers of this state may take custody of and detain the parolee or probationer involved for a period not to exceed 15 days prior to the hearing and for such reasonable period after the hearing or waiver as may be necessary to arrange for the retaking or reincarceration if it appears to the hearing officer or officers that retaking or reincarceration is likely to follow.

History: En. Sec. 1, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.1.

46-23-1104. Hearing officers — who eligible. Any hearing pursuant to this part may be held before the administrator of the interstate compact for the supervision of parolees and probationers, a deputy of such administrator, or any other person authorized pursuant to the laws of this state to hear cases of alleged parole or probation violation, except that no hearing officer shall be the person making the allegation of violation.

History: En. Sec. 2, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.2.

46-23-1105. Rights of parolee or probationer regarding hearing. With respect to any hearing pursuant to this part, the parolee or probationer:

(1) shall have reasonable notice in writing of the nature and content of the allegations to be made, including notice that its purpose is to determine whether there is probable cause to believe that he has committed a violation that may lead to a revocation of parole or probation;

(2) shall be permitted to consult with any persons whose assistance he reasonably desires prior to the hearing;

(3) shall have the right to confront and examine any persons who have made allegations against him unless the hearing officer determines that such confrontation would present a substantial present or subsequent danger of harm to such person or persons;

(4) may admit, deny, or explain the violation alleged and may present proof, including affidavits and other evidence, in support of his contentions. A record of the proceedings shall be made and preserved.

History: En. Sec. 3, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.3.

46-23-1106. Hearing in another state — record, effect. In any case of alleged parole or probation violation by a person being supervised in another state pursuant to the interstate compact for the supervision of parolees and probationers, any appropriate judicial or administrative officer or agency in another state is authorized to hold a hearing on the alleged violation. Upon receipt of the record of a parole or probation violation hearing held in another state pursuant to a statute substantially similar to this part, such record shall have the same standing and effect as though the proceeding of which it is a record was had before the appropriate officer or officers in this state and any recommendations contained in or accompanying the record shall be fully considered by the appropriate officer or officers of this state in making disposition of the matter.

History: En. Sec. 4, Ch. 75, L. 1973; R.C.M. 1947, 95-3202.4.

CHAPTER 24

TREATMENT OF VICTIMS AND WITNESSES

Part 1 — General Provisions

46-24-101. Purpose.
46-24-102. Training in victim assistance.
46-24-103. Duty of attorney general.
46-24-104. Consultation with victim of felony offense.
46-24-105. No cause of action for damages.

Part 2 — Services to Victim, Witness

46-24-201. Services to victims of crime.
46-24-202. Notification of available protective services.
46-24-203. Prompt notification to victims and witnesses of felony offenses.
46-24-204. Scheduling changes.
46-24-205. Notification to employer or creditor.
46-24-206. Property return.
46-24-207. Victims and witnesses of juvenile felony offenses.

Chapter Cross-References

Crimes, Title 45.

Witnesses, Title 46, ch. 15, part 1.

Crime Victims Compensation Act, Title 53, ch. 9.

Part 1

General Provisions

46-24-101. Purpose. The legislature declares that the purposes of this chapter are to:

(1) protect the role of crime victims and witnesses in the criminal justice process;

(2) assure that victims and witnesses of crime receive fair and proper treatment from law enforcement agencies and prosecutors; and

(3) provide a standard of conduct governing the treatment of victims and witnesses in criminal cases.

History: En. Sec. 1, Ch. 554, L. 1985.

Cross-References

Statutory provisions on evidence — "witness" defined, 26-1-101.

Crimes — general principles of liability — "witness" defined, 45-2-101.

46-24-102. Training in victim assistance. The Montana law enforcement academy shall offer education and training in victim assistance to law enforcement officers and prosecuting attorneys and shall provide such education and training in its regular curriculum, so that victims may be properly assisted.

History: En. Sec. 9, Ch. 554, L. 1985.

Cross-References

Law Enforcement Academy, Title 44, ch. 10.

46-24-103. Duty of attorney general. The attorney general shall assure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system. In addition, the attorney general shall assure that victims and witnesses are provided important services and assistance as required under this chapter.

History: En. Sec. 10, Ch. 554, L. 1985.

Cross-References

Attorney General — general duties, 2-15-501.

Crime Victims Compensation Act, Title 53, ch. 9.

46-24-104. Consultation with victim of felony offense. The prosecuting attorney in a criminal case shall consult with the victim of a felony offense or, in the case of a minor child victim or homicide victim, with the family of the victim in order to obtain the views of the victim or his family regarding the disposition of the case, including:

(1) dismissal of the case;

(2) release of the accused pending judicial proceedings;

(3) plea negotiations; and

(4) pretrial diversion of the case from the judicial process.

History: En. Sec. 6, Ch. 554, L. 1985.

Cross-References

Crimes — general principles of liability — "felony" offense defined, 45-2-101.

46-24-105. No cause of action for damages. Nothing in this chapter may be construed to create a cause of action for damages against the state or one of its political subdivisions.

History: En. Sec. 11, Ch. 554, L. 1985.

Cross-References

Governmental entity — liability exposure and insurance coverage, Title 2, ch. 9.

Part 2

Services to Victim, Witness

46-24-201. Services to victims of crime. Law enforcement personnel shall assure that a victim of a crime receives emergency social and medical services as soon as possible and that such victim is given information on the following:

(1) the availability of crime victim compensation;

(2) community-based victim treatment programs;

(3) the role of the victim in the criminal justice process, including what he can expect from the system, as well as what the system expects from the victim; and

(4) stages in the criminal justice process of significance to a crime victim and the manner in which information about such stages may be obtained.

History: En. Sec. 2, Ch. 554, L. 1985.

Cross-References

Child abuse, neglect, and dependency — protective care, Title 41, ch. 3, part 3.

Restitution to victims, 46-18-241 through 46-18-249.

Crime Victims Compensation Act, Title 53, ch. 9.

46-24-202. Notification of available protective services. Law enforcement officers and prosecuting attorneys shall provide a victim or witness information on the availability of services to protect the victim or witness from intimidation.

History: En. Sec. 3, Ch. 554, L. 1985.

Cross-References

Protection of witnesses, Title 26, ch. 2, part 4.

Detaining witnesses — criminal — material witness, 46-11-601.

46-24-203. Prompt notification to victims and witnesses of felony offenses. (1) A person described in subsection (2) who provides the appropriate official with a current address and telephone number must receive prompt advance notification, if possible, of proceedings relating to his case, including:

(a) the arrest of an accused;

(b) the release of the accused pending judicial proceedings; and

(c) proceedings in the prosecution of the accused, including entry of a plea of guilty, the setting of a trial date, the sentencing schedule, the sentence imposed, the term of imprisonment, if imposed, and the release of the accused from imprisonment.

(2) A person entitled to notification under subsection (1) must be a victim or witness of a felony offense, a relative of such a victim or witness who is a minor, or a relative of a homicide victim.

History: En. Sec. 5, Ch. 554, L. 1985.

Cross-References

Crimes — general principles of liability — "felony" offense defined, 45-2-101.

46-24-204. Scheduling changes. (1) As soon as practicable, the prosecuting attorney shall notify a victim or witness of any scheduling changes that may affect the appearance of the victim or witness at a criminal justice proceeding that he is scheduled to attend.

(2) For the purpose of providing notification, the prosecuting attorney shall have available a system for promptly alerting a victim or witness that a scheduling change has been made.

History: En. Sec. 4, Ch. 554, L. 1985.

46-24-205. Notification to employer or creditor. (1) The law enforcement agency or prosecuting attorney in a criminal case shall assist a victim or witness who requests assistance in informing an employer that the need for victim and witness cooperation in the prosecution of the case may necessitate absence of the victim or witness from his place of employment.

(2) A law enforcement agency or prosecuting attorney shall assist a victim or witness who, as a direct result of a crime or because of cooperation with the law enforcement agency or prosecuting attorney, is subjected to serious financial strain. Such agency or prosecuting attorney shall assist the victim or witness by explaining to creditors the reason for such serious financial strain.

History: En. Sec. 8, Ch. 554, L. 1985.

46-24-206. Property return. A law enforcement agency or prosecuting attorney shall promptly return any of the victim's property held for evidentiary purposes, unless there is a compelling law enforcement reason for retaining such property.

History: En. Sec. 7, Ch. 554, L. 1985.

Cross-References

Disposition of property of deceased, 7-4-2917.

Custody and disposition of items seized by peace officer without search warrant, 46-5-311.

46-24-207. Victims and witnesses of juvenile felony offenses. (1) The services and assistance that must be provided under this chapter to a victim or witness of a crime must also be provided to the victim or witness of a juvenile felony offense.

(2) The attorney general shall assure that a victim or witness of a juvenile felony offense is provided the same services and assistance required under this chapter for the victim or witness of a crime.

(3) For purposes of this section, "juvenile felony offense" means an offense committed by a juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103.

History: En. Sec. 1, Ch. 170, L. 1991.

Compiler's Comments

Effective Date: Section 3, Ch. 170, L. 1991, provided: "[This act] is effective July 1, 1991."

CHAPTERS 25 THROUGH 29

RESERVED

CHAPTER 30

UNIFORM CRIMINAL EXTRADITION ACT

Part 1 — General Provisions

46-30-101. Definitions.
46-30-102. Nonwaiver by this state.

Part 2 — Extradition to Another State From This State

46-30-201. Fugitives from justice — duty of governor.
46-30-202. Prosecution pending in this state at time of requisition.
46-30-203. Extradition of persons who left demanding state involuntarily.
46-30-204. Extradition of persons not present in demanding state when crime committed.
46-30-205 through 46-30-210 reserved.
46-30-211. Demand — form.
46-30-212. Investigation by governor.
46-30-213. Issuance of arrest warrant by governor.
46-30-214. Recall of warrant or alias warrant.
46-30-215. Execution of warrant.
46-30-216. Authority of arresting officer.
46-30-217. Rights of accused persons — habeas corpus.
46-30-218. Penalty for violating accused's rights.
46-30-219 through 46-30-224 reserved.
46-30-225. Guilt or innocence of accused, when inquired into.
46-30-226. Confinement of accused in jail on route.
46-30-227. Arrest of accused before making of requisition.
46-30-228. Written waiver of extradition proceedings.

46-30-229. Prior waiver of extradition.

Part 3 — Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant.
46-30-302. Commitment to await requisition.
46-30-303. Bail while awaiting requisition.
46-30-304. Extension of time of commitment or bail.
46-30-305. Forfeiture of bail.

Part 4 — Extradition to This State From Another State

46-30-401. Application for issuance of requisition.
46-30-402. Requisition by governor.
46-30-403. Extradition of persons held in another state.
46-30-404. Immunity from service of civil process.
46-30-405. No immunity from other criminal prosecutions.
46-30-406 through 46-30-410 reserved.
46-30-411. Expenses of bringing fugitives back to this state.
46-30-412. Restrictions on compensation for assisting return of fugitive.
46-30-413. Penalty for illegal compensation.

Part 1

General Provisions

46-30-101. Definitions. Where appearing in this chapter, the term:

(1) "governor" includes any person performing the functions of governor by authority of the law of this state;

(2) "executive authority" includes the governor and any person performing the functions of governor in a state other than this state or the chairman of a recognized Indian tribe within the state of Montana;

(3) "state", referring to a state other than this state, includes any other state or territory, organized or unorganized, of the United States of America or an Indian reservation within the state of Montana.

History: En. 95-3101 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3101; amd. Sec. 1, Ch. 379, L. 1991.

Compiler's Comments

1991 Amendment: Expanded definition of executive authority to include chairman of recognized Indian tribe within Montana; and expanded definition of state to include Indian reservation within Montana. Amendment effective April 6, 1991.

46-30-102. Nonwaiver by this state. Nothing contained in this chapter may be considered a waiver by this state of its right, power, or privilege to try the demanded person for a crime committed within this state or of its right, power, or privilege to regain custody of the person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for a crime committed within this state; nor may any proceedings had under this chapter which result in or fail to result in extradition be considered in any way a waiver by this state of any of its rights, privileges, or jurisdiction.

History: En. 95-3129 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 58, Ch. 184, L. 1977; R.C.M. 1947, 95-3129.

Part 2

Extradition to Another State From This State

46-30-201. Fugitives from justice — duty of governor. Subject to the provisions of this chapter, the provisions of the constitution of the United States controlling, and any and all acts of congress enacted in pursuance thereof, it is the duty of the governor of this state to have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony, or other crime who has fled from justice and is found in this state.

History: En. 95-3102 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3102.

Cross-References

Treason — of what it consists, Art. II, sec. 30, Mont. Const.

46-30-202. Prosecution pending in this state at time of requisition. If a criminal prosecution has been instituted against such person under the laws of this state and is still pending, the governor, in his discretion, either may surrender him on demand of the executive authority of another state or hold him until he has been tried and discharged or convicted and punished in this state.

History: En. 95-3119 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3119.

46-30-203. Extradition of persons who left demanding state involuntarily. The governor of this state may also surrender on demand of the governor of any other state any person in this state who is charged in the manner provided in 46-30-401 with having violated the laws of the state whose governor is making the demand, even though such person left the demanding state involuntarily.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).

46-30-204. Extradition of persons not present in demanding state when crime committed. The governor of this state may also surrender, on demand of the executive authority of any other state, any person in this state charged in such other state in the manner provided in 46-30-211 with committing an act in this state or in a third state intentionally resulting in a crime in the state whose executive authority is making the demand. The provisions of this chapter not otherwise inconsistent shall apply to such cases, even though the accused was not in that state at the time of the commission of the crime and has not fled therefrom.

History: En. 95-3106 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3106.

Cross-References

This section as exception to commitment to await requisition, 46-30-302.

46-30-205 through 46-30-210 reserved.

46-30-211. Demand — form. (1) No demand for the extradition of a person charged with crime in another state shall be recognized by the governor unless in writing alleging that the accused was present in the demanding state at the time of the commission of the alleged crime and that thereafter he fled from the state, except in cases arising under 46-30-204, and accompanied by:

(a) a copy of an indictment found or information supported by affidavit in the state having jurisdiction of the crime;

(b) a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereon; or

(c) a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation, or parole.

(2) The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state. The copy of the indictment, information, affidavit, judgment of conviction, or sentence must be authenticated by the executive authority making the demand.

History: En. 95-3103 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3103.

46-30-212. Investigation by governor. When a demand shall be made upon the governor of this state by the executive authority of another state for the surrender of a person so charged with crime, the governor may call upon the attorney general or any prosecuting officer in this state to investigate or assist in investigating the demand and to report to him the situation and circumstances of the person so demanded and whether he ought to be surrendered.

History: En. 95-3104 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3104.

46-30-213. Issuance of arrest warrant by governor. If the governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

History: En. 95-3107 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3107.

46-30-214. Recall of warrant or alias warrant. The governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

History: En. 95-3121 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3121.

46-30-215. Execution of warrant. Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where he may be found within the state, to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to the provisions of this chapter, to the duly authorized agent of the demanding state.

History: En. 95-3108 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3108.

46-30-216. Authority of arresting officer. Every such peace officer or other person empowered to make the arrest shall have the same authority to command assistance in arresting the accused as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

History: En. 95-3109 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3109.

Cross-References

Assisting a peace officer in making an arrest, 45-7-304, 46-6-402.

46-30-217. Rights of accused persons — habeas corpus. (1) No person arrested upon such warrant may be delivered over to the agent whom the executive authority demanding him has appointed to receive him unless he is first taken without delay before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel.

(2) If the prisoner or his counsel states that he or they desire to test the legality of his arrest, the judge of the court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When the writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest was made and in which the accused is in custody and to the agent of the demanding state.

History: En. 95-3110 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 52, Ch. 184, L. 1977; R.C.M. 1947, 95-3110.

Cross-References

Duty of court to advise at initial appearance, 46-7-102.

Right to counsel, 46-8-101.

Court to advise defendant of rights, 46-12-210.

Right to counsel — sentencing hearing, 46-18-223.

Habeas corpus, Title 46, ch. 22.

Right to counsel — probation hearing, 46-23-204.

46-30-218. Penalty for violating accused's rights. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the governor's warrant in willful disobedience of 46-30-217 shall be guilty of a misdemeanor and on conviction shall be fined not more than $1,000 or be imprisoned not more than 6 months, or both.

History: En. 95-3111 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3111.

46-30-219 through 46-30-224 reserved.

46-30-225. Guilt or innocence of accused, when inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition provided for in 46-30-211 has been presented to the governor except as it may be involved in identifying the person held as the person charged with the crime.

History: **En. 95-3120 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 55, Ch. 184, L. 1977; R.C.M. 1947, 95-3120.**

46-30-226. Confinement of accused in jail on route. (1) The officer or persons executing the governor's warrant of arrest or the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person, however, being chargeable with the expense of keeping.

(2) The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state or to whom a prisoner may have been delivered after waiving extradition in such other state and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass. The keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this state.

History: **En. 95-3112 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3112.**

46-30-227. Arrest of accused before making of requisition. (1) A judge or magistrate of this state shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein wherever the person may be found in this state and to bring the person before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest is made to answer the charge or complaint and affidavit whenever:

(a) a person within this state is charged on the oath of a credible person before the judge or magistrate with the commission of a crime in another state and, except in cases arising under 46-30-204, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation, or parole; or

(b) a complaint is made before the judge or magistrate setting forth on the affidavit of a credible person in another state that a crime has been committed in the other state and that the accused is believed to be in this state and has been charged in the other state with:

(i) the commission of the crime and, except in cases arising under 46-30-204, having fled from justice; or

(ii) having been convicted of a crime in that state and having escaped from bail, probation, or parole.

(2) A certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

History: En. 95-3113 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 53, Ch. 184, L. 1977; R.C.M. 1947, 95-3113.

Cross-References

Arrest of accused without warrant, 46-30-301.

46-30-228. Written waiver of extradition proceedings. (1) Any person of this state charged with having committed any crime in another state or alleged to have escaped from confinement or broken the terms of his bail, probation, or parole may waive the issuance and service of the warrant provided for in 46-30-213 and 46-30-215 and all other procedures incidental to extradition proceedings by executing or subscribing in the presence of a judge of any court of record within this state a writing which states that he consents to return to the demanding state. Before such waiver shall be executed or subscribed by such person, it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a writ of habeas corpus as provided for in 46-30-217.

(2) If and when such consent has been duly executed, it shall forthwith be forwarded to the office of the governor of this state and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state and shall deliver or cause to be delivered to such agent or agents a copy of such consent.

(3) Nothing in this section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights, or duties of the officers of the demanding state or of this state.

History: En. 95-3128 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3128.

46-30-229. Prior waiver of extradition. (1) A person who is alleged to have violated the terms of his bail, probation, parole, or any other conditional release from another state and who is held in this state may be released to the duly authorized agent of that other state without the warrant provided for in 46-30-213 if the following has occurred:

(a) a district court in this state has held a hearing at which the state has presented:

(i) a certified copy of an agreement to waive extradition, signed by the person, or an order from the other state releasing the person on the condition that he waive extradition;

(ii) a certified copy of the warrant or order from the other state directing the return of the person for violating the terms of his release; and

(iii) evidence that the person is the same person named in the warrant or order; and

(b) the district court has found that there is probable cause to believe that the person is the same person charged in the warrant or order. Whenever a district court makes this finding, it shall, except as provided in subsection (2), order that the person be remanded to custody and delivered to agents of the other state. The court shall also advise the person of his right to contest the order by filing a writ of habeas corpus.

(2) If the person wishes to test the validity of the order issued pursuant to subsection (1)(b), the court shall fix a reasonable time for him to apply for a writ of habeas corpus before he may be released to agents from the other state.

History: En. Sec. 1, Ch. 392, L. 1987.

Part 3

Procedure for Arresting Accused Without Warrant

46-30-301. Arrest of accused without warrant. The arrest of a person may be lawfully made also by any peace officer or a private person without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term of 1 year or more. When arrested under this section, the accused must be taken before a judge or magistrate with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in 46-30-227. After the complaint is made, his answer must be heard as if he had been arrested on a warrant.

History: En. 95-3114 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3114; amd. Sec. 17, Ch. 79, L. 1983; amd. Sec. 2, Ch. 379, L. 1991.

Compiler's Comments

1991 Amendment: At end of first sentence, after "term", substituted "of 1 year or more" for "exceeding 1 year"; and made minor changes in style. Amendment effective April 6, 1991.

Cross-References

Manner of arrest without warrant, 46-6-312.

46-30-302. Commitment to await requisition. If from the examination before the judge or magistrate it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under 46-30-204, that he has fled from justice, the judge or magistrate must by a warrant reciting the accusation commit him to the county jail for such a time not exceeding 30 days and specified in the warrant as will enable the arrest of the accused to be made under a warrant of the governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused give bail as provided in 46-30-303 or until he shall be legally discharged.

History: En. 95-3115 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3115.

46-30-303. Bail while awaiting requisition. Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or magistrate in this state may admit the person arrested to bail by bond or undertaking with sufficient sureties and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond or undertaking and for his surrender to be arrested upon the warrant of the governor of this state.

History: En. 95-3116 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3116.

Cross-References

Bail, Title 46, ch. 9.

46-30-304. Extension of time of commitment or bail. If the accused is not arrested under the warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of 60 days or a supreme court justice or district court judge may again take bail for his appearance and surrender, as provided in 46-30-303, for a period not to exceed 60 days after the date of the new bond or undertaking.

History: En. 95-3117 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 54, Ch. 184, L. 1977; R.C.M. 1947, 95-3117.

46-30-305. Forfeiture of bail. If the prisoner is admitted to bail and fails to appear and surrender himself according to the conditions of his bond, the judge or magistrate by proper order shall declare the bond forfeited and order his immediate arrest without warrant if he be within this state. Recovery may be had on such bond in the name of the state as in the case of other bonds or undertakings given by the accused in criminal proceedings within this state.

History: En. 95-3118 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3118.

Cross-References

Recovery by state on forfeited bond, 46-9-503, 46-9-512.

Part 4

Extradition to This State From Another State

46-30-401. Application for issuance of requisition. (1) When the return to this state of a person charged with a crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged. The application shall state the name of the person charged, the crime charged against him, the approximate time, place, and circumstances of its commission, and the state in which he is believed to be, including the location of the accused therein at the time the application is made. It shall certify that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not being instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden

of the institution or sheriff of the county from which the escape was made shall present to the governor a written application for a requisition for the return of the person. The application shall state the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, and the state in which he is believed to be, including the location of the person therein at the time the application is made.

(3) The application shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the:

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or

(e) sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he considers proper to be submitted with the application.

(5) One copy of the application, with the action of the governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition.

History: En. 95-3123 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 56, Ch. 184, L. 1977; R.C.M. 1947, 95-3123; amd. Sec. 172, Ch. 575, L. 1981.

Cross-References

Extradition of persons who left demanding state involuntarily, 46-30-203.

46-30-402. Requisition by governor. Whenever the governor of this state shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation, or parole in this state from the chief executive of any other state or from the chief justice or an associate justice of the supreme court of the District of Columbia authorized to receive such demand under the laws of the United States, he shall issue a warrant under the seal of this state to some agent commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this state in which the offense was committed.

History: En. 95-3122 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3122.

46-30-403. Extradition of persons held in another state. When it is desired to have returned to this state a person charged in this state with a crime and such person is imprisoned or is held under criminal proceedings then pending against him in another state, the governor of this state may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this state as soon as the prosecution in this state is terminated.

History: En. 95-3105 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3105(part).

46-30-404. Immunity from service of civil process. A person brought into this state on or after waiver of extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned until he has been convicted in the criminal proceedings or, if acquitted, until he has had reasonable opportunity to return to the state from which he was extradited.

History: En. 95-3127 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3127.

46-30-405. No immunity from other criminal prosecutions. After a person has been brought back to this state by extradition proceedings, he may be tried in this state for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

History: En. 95-3130 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3130.

46-30-406 through 46-30-410 reserved.

46-30-411. Expenses of bringing fugitives back to this state. (1) When the governor of this state, in the exercise of the authority conferred by section 2, Article IV, of the constitution of the United States or by the laws of this state, demands from the executive authority of any state of the United States or of any foreign government the surrender to the authorities of this state of a fugitive from justice who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the attorney general and paid out of the state treasury.

(2) An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent shall be paid travel expenses, as provided for in 2-18-501 through 2-18-503, as amended, incurred in returning the fugitive to this state.

History: (1)En. 95-3124 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 18, Ch. 343, L. 1977; Sec. 95-3124, R.C.M. 1947; (2)En. Sec. 1, Ch. 331, L. 1975; amd. Sec. 31, Ch. 453, L. 1977; Sec. 95-3124.1, R.C.M. 1947; R.C.M. 1947, 95-3124, 95-3124.1; amd. Sec. 3, Ch. 446, L. 1979.

Cross-References

Mileage allowed when private vehicle used, 2-18-503.

46-30-412. Restrictions on compensation for assisting return of fugitive. No compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other person for a service rendered in procuring from the governor the demand mentioned in 46-30-411(1), for the surrender of the fugitive, or for conveying him to this state or detaining him therein, except as provided in 46-30-411.

History: En. 95-3125 by Sec. 14, Ch. 513, L. 1973; amd. Sec. 57, Ch. 184, L. 1977; R.C.M. 1947, 95-3125.

46-30-413. Penalty for illegal compensation. Every person who violates any of the provisions of 46-30-412 is guilty of a misdemeanor.

History: En. 95-3126 by Sec. 14, Ch. 513, L. 1973; R.C.M. 1947, 95-3126.

Cross-References

When no penalty is specified, 46-18-212.

CHAPTER 31

INTERSTATE AGREEMENT ON DETAINERS

Part 1 — Contents of Agreement

46-31-101. Agreement on detainers — enactment and text.
46-31-102. Jurisdiction of district courts.

Part 2 — Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement.
46-31-202. Warden to give over inmate.
46-31-203. Coordinator of agreement.
46-31-204. Penalty for escape from custody on detainer.

Chapter Cross-References

Extradition of persons held in another state, 46-30-403.

Part 1

Contents of Agreement

46-31-101. Agreement on detainers — enactment and text. The agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Article II

As used in this agreement:

(1) "state" shall mean a state of the United States, the United States of America, a territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico;

(2) "sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof;

(3) "receiving state" shall mean the state in which trial is to be had on an indictment, information, or complaint pursuant to Article III or Article IV hereof.

Article III

(1) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

(2) The written notice and request for final disposition referred to in subsection (1) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(3) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(4) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(5) Any request for final disposition made by a prisoner pursuant to subsection (1) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (4) hereof and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(6) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in subsection (1) hereof shall void the request.

Article IV

(1) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Article V(1) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability either upon his own motion or upon motion of the prisoner.

(2) Upon receipt of the officer's written request as provided in subsection (1) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under

which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(3) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(4) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in subsection (1), but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(5) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Article V(5) hereof, such indictment, information, or complaint shall not be of any further force or effect and the court shall enter an order dismissing the same with prejudice.

Article V

(1) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(2) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(a) proper identification and evidence of his authority to act for the state into whose temporary custody the prisoner is to be given;

(b) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(3) If the appropriate authority shall refuse or fail to accept temporary custody of said person or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the periods provided by this chapter, the

appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice and any detainer based thereon shall cease to be of any force or effect.

(4) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(5) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(6) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run, but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(7) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(8) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

Article VI

(1) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(2) No provision of this agreement and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

Article VII

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement and who shall provide within and without the state information necessary to the effective operation of this agreement.

Article VIII

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

Article IX

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable, and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstances is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 215, L. 1963; Sec. 94-1101-1, R.C.M. 1947; redes. 95-3131 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3131; amd. Sec. 1, Ch. 346, L. 1985.

46-31-102. Jurisdiction of district courts. The phrase "appropriate court", as used in the agreement on detainers, shall with reference to the courts of this state mean district courts.

History: En. Sec. 2, Ch. 215, L. 1963; Sec. 94-1101-2, R.C.M. 1947; redes. 95-3132 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3132.

Part 2

Enforcement of Agreement

46-31-201. Public agencies to cooperate in enforcement. All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce the agreement on detainers and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

History: En. Sec. 3, Ch. 215, L. 1963; Sec. 94-1101-3, R.C.M. 1947; redes. 95-3133 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3133.

46-31-202. Warden to give over inmate. It shall be lawful and mandatory upon the warden or other official in charge of a penal or correctional institution in this state to give over the person of any inmate thereof whenever so required by the operation of the agreement on detainers.

History: En. Sec. 5, Ch. 215, L. 1963; Sec. 94-1101-5, R.C.M. 1947; redes. 95-3135 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3135.

46-31-203. Coordinator of agreement. The governor shall appoint an officer of this state as coordinator of this agreement who, acting jointly with like officers of party states, shall promulgate rules to carry out more effectively the terms and provisions of this chapter and who shall provide within and without the state information necessary to the effective operation of this agreement.

History: En. Sec. 6, Ch. 215, L. 1963; Sec. 94-1101-6, R.C.M. 1947; redes. 95-3136 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3136.

46-31-204. Penalty for escape from custody on detainer. Every prisoner confined in state prison for a term less than for life who has been lawfully delivered into the temporary custody of appropriate officers of a party state for trial on a charge or detainer based on an untried indictment, information, or complaint and who escapes therefrom is punishable by a fine in an amount not to exceed $50,000, or by imprisonment in the state prison for a term of not less than 1 year or more than 10 years, or by both, said second term of imprisonment to commence from the time he would otherwise have been discharged from said prison.

History: En. Sec. 4, Ch. 215, L. 1963; Sec. 94-1101-4, R.C.M. 1947; redes. 95-3134 by Sec. 29, Ch. 513, L. 1973; R.C.M. 1947, 95-3134; amd. Sec. 7, Ch. 198, L. 1981.

TITLES 47 AND 48

RESERVED

TITLE 49

HUMAN RIGHTS

Ch.
1. Basic Rights.
2. Illegal Discrimination.
3. Governmental Code of Fair Practices.
4. Rights of the Handicapped.

CHAPTER 1

BASIC RIGHTS

Part 1 — Basic Personal Rights

49-1-101. Right of protection from personal injury.
49-1-102. Freedom from discrimination.
49-1-103. Right to use force.

Part 2 — Basic Political Rights

49-1-201. Right to state's protection.
49-1-202. Right to hold elected office.
49-1-203. Rights and duties of electors as compared to nonelectors.
49-1-204. Rights and duties of citizens of other states.

Chapter Cross-References

Inalienable rights, Art. II, sec. 3, Mont. Const.

Equal protection — prohibition on discrimination, Art. II, sec. 4, Mont. Const.; Amend. 14, U.S. Const.

Freedom of religion, Art. II, sec. 5, Mont. Const.; 39-31-204.

Freedom of assembly, Art. II, sec. 6, Mont. Const.

Freedom of speech, expression, and press, Art. II, sec. 7, Mont. Const.

Right to bear arms, Art. II, sec. 12, Mont. Const.

Adult rights, Art. II, sec. 14, Mont. Const.

Rights of persons not adults, Art. II, sec. 15, Mont. Const.

Access to courts, Art. II, sec. 16, Mont. Const.

Due process of law, Art. II, sec. 17, Mont. Const.; Amend. 14, U.S. Const.

Ex post facto, obligation of contracts, and irrevocable privileges, Art. II, sec. 31, Mont. Const.

Unenumerated rights, Art. II, sec. 34, Mont. Const.; Amend. 9, U.S. Const.

Freedom of religion, speech, press, assembly, and petition, Amend. 1, U.S. Const.

Double jeopardy, self-incrimination, and due process of law, Amend. 5, U.S. Const.

State Coordinator of Indian Affairs, 2-15-1813, 90-11-101, 90-11-102.

Rights and obligations of minors, Title 41, ch. 1.

"Baby Jane Doe law" — right of infants to medical treatment, 41-3-102 (see definitions of "adequate health care" and "withholding of medically indicated treatment").

Effect of former status as mental patient, 53-21-189.

Part 1

Basic Personal Rights

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Search and seizure, Art. II, sec. 11, Mont. Const.; Amend. 4, U.S. Const.; Title 46, ch. 5.

Quartering soldiers, Art. II, sec. 32, Mont. Const.; Amend. 3, U.S. Const.

Husband and wife, Title 40, ch. 2.

Right to die with dignity, Title 50, ch. 9.

Rights of nonsmokers, Title 50, ch. 40.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

49-1-101. Right of protection from personal injury. Besides the personal rights mentioned or recognized in other statutes and subject to the qualifications and restrictions provided by law, every person has the right of protection from bodily restraint or harm, personal insult, defamation, and injury to his personal relations.

History: En. Sec. 30, Civ. C. 1895; re-en. Sec. 3600, Rev. C. 1907; re-en. Sec. 5688, R.C.M. 1921; Cal. Civ. C. Sec. 43; Field Civ. C. Sec. 27; re-en. Sec. 5688, R.C.M. 1935; R.C.M. 1947, 64-201; amd. Sec. 1, Ch. 177, L. 1979.

Cross-References

Habeas corpus, Art. II, sec. 19, Mont. Const.

Bail, Art. II, sec. 21, Mont. Const.; Amend. 8, U.S. Const.

Excessive sanctions, Art. II, sec. 22, Mont. Const.; Amend. 8, U.S. Const.

Detention to secure testimony, Art. II, sec. 23, Mont. Const.

Rights of the accused, Art. II, sec. 24, Mont. Const.; Amend. 6, U.S. Const.

Self-incrimination and double jeopardy, Art. II, sec. 25, Mont. Const.

Trial by jury, Art. II, sec. 26, Mont. Const.

Imprisonment for debt, Art. II, sec. 27, Mont. Const.

Habeas corpus, bill of attainder and ex post facto, Art. I, sec. 9, U.S. Const.

Slavery, Amend. 13, U.S. Const.

Limit on rights, 1-3-205.

Consent, 1-3-206.

Remedy, 1-3-214.

Voter information pamphlet — rejection of defamatory matter, 13-27-408.

Code of Fair Campaign Practices, Title 13, ch. 35, part 3.

Availability of remedies — liability, Title 27, ch. 1.

Abolition of certain causes of action, Title 27, ch. 1, part 6.

Libel and slander, Title 27, ch. 1, part 8.

Actions against consumer reporting agencies, 31-3-141.

Defaming insurer prohibited, 33-18-302.

Defaming competitors — hearing aid dispensers, 37-16-411.

Marital status irrelevant to parent-child relationship, 40-6-103.

Use of force in defense of person, 45-3-102.

Mistreatment of prisoners, 45-5-204.

False imprisonment, 45-5-301.

Criminal defamation, 45-8-212.

Bail, Title 46, ch. 9.

Mental competency of criminal defendants, Title 46, ch. 14.

Criminal defamation — jury to decide law, 46-16-103.

Habeas corpus, Title 46, ch. 22.

Commitment of the developmentally disabled, Title 53, ch. 20, part 1.

Commitment of the seriously mentally ill, Title 53, ch. 21, part 1.

49-1-102. Freedom from discrimination. (1) The right to be free from discrimination because of race, creed, religion, color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right must include but not be limited to:

(a) the right to obtain and hold employment without discrimination; and

(b) the right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1). Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

History: En. Sec. 1, Ch. 201, L. 1965; amd. Sec. 1, Ch. 39, L. 1971; amd. Sec. 1, Ch. 77, L. 1974; amd. Sec. 1, Ch. 524, L. 1975; amd. Sec. 6, Ch. 38, L. 1977; R.C.M. 1947, 64-301; amd. Sec. 2, Ch. 682, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) concerning consideration of factors in adoption proceedings; and made minor change in style. Amendment effective July 1, 1991.

Cross-References

Classified service employees — municipal commission-manager government, 7-3-4415.

Employment by county Board of Park Commissioners, 7-16-2326.

Work-study program, 20-25-707.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Exemption from association with labor organization on religious grounds, 39-31-204.

Health care facilities, 50-5-105.

Furnishing of medical assistance, 53-6-105.

49-1-103. Right to use force. Any necessary force may be used to protect from wrongful injury the person or property of one's self, of a wife, husband, child, parent, or other relative or member of one's family, or of a ward, servant, master, or guest.

History: En. Sec. 36, Civ. C. 1895; re-en. Sec. 3606, Rev. C. 1907; re-en. Sec. 5694, R.C.M. 1921; Cal. Civ. C. Sec. 50; Based on Field Civil C. Sec. 33; re-en. Sec. 5694, R.C.M. 1935; R.C.M. 1947, 64-210.

Cross-References

Justifiable use of force, Title 45, ch. 3.

Part 2

Basic Political Rights

Part Cross-References

Popular sovereignty, Art. II, sec. 1, Mont. Const.

Self-government, Art. II, sec. 2, Mont. Const.

Right of participation in government, Art. II, sec. 8, Mont. Const.

Right to know, Art. II, sec. 9, Mont. Const.

Right of suffrage, Art. II, sec. 13, Mont. Const.

Rights of the convicted, Art. II, sec. 28, Mont. Const.

Civilian control of the military, Art. II, sec. 32, Mont. Const.

Importation of armed persons, Art. II, sec. 33, Mont. Const.

Initiative and referendum, Art. III, sec. 4 through 6, Mont. Const.

Suffrage and elections, Art. IV, Mont. Const.

Initiative and referendum — local government, Art. XI, sec. 8, Mont. Const.

Right to vote — race, sex, poll tax, age 18, Amend. 15, 19, 24, 26, U.S. Const.

Citizenship, Title 1, ch. 1, part 4.

Public participation in governmental operations, Title 2, ch. 3.

Access to public records, 2-6-102, 2-6-104, 2-6-207, 2-6-307.

United States citizenship — naturalization records, 3-5-514.

United States citizenship — naturalization fees, 3-5-515.

Access to public records — docket of lobbyists, 5-7-202.

Public participation in municipal government, 7-1-4131, 7-1-4141 through 7-1-4143, 7-3-1218, 7-3-4323.

Access to municipal public records, 7-1-4144.

Duty of citizens to aid in law enforcement, 7-4-4303, 7-4-4304, 45-7-304.

Citizen participation — proposals of Interlocal Cooperation Commission, 7-11-225.

Participation in home guard, 10-1-701.

Elections, Title 13.

Qualifications of voters, 13-1-111, 13-2-206.

Rights of convicted persons, 46-18-801.

49-1-201. Right to state's protection. Every person while within the jurisdiction of this state is entitled to its protection.

History: En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907; re-en. Sec. 34, R.C.M. 1921; Cal. Pol. C. Sec. 54; re-en. Sec. 34, R.C.M. 1935; R.C.M. 1947, 83-401.

Cross-References

Powers of municipalities with general powers, 7-1-4123, 7-1-4124.

Child abuse, neglect, and dependency, Title 41, ch. 3.

Spouse abuse, Title 52, ch. 6, part 1.

49-1-202. Right to hold elected office. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

History: En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907; re-en. Sec. 38, R.C.M. 1921; Cal. Pol. C. Sec. 58; re-en. Sec. 38, R.C.M. 1935; R.C.M. 1947, 83-405.

Cross-References

Qualifications of Legislators, Art. V, sec. 4, Mont. Const.

Qualifications of executive officers, Art. VI, sec. 3, Mont. Const.

Qualifications of judicial officers, Art. VII, sec. 9, Mont. Const.

Qualifications of U.S. Representatives, Art. I, sec. 2, U.S. Const.

Qualifications of U.S. Senators, Art. I, sec. 3, U.S. Const.

Qualifications of U.S. President, Art. II, sec. 1, U.S. Const.

No religious test to hold public office, Art. VI, U.S. Const.

Eligibility to hold civil office, 2-16-102.

Qualifications of voters, 13-1-111, 13-2-206.

49-1-203. Rights and duties of electors as compared to nonelectors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

History: En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907; re-en. Sec. 39, R.C.M. 1921; Cal. Pol. C. Sec. 59; re-en. Sec. 39, R.C.M. 1935; R.C.M. 1947, 83-406.

49-1-204. Rights and duties of citizens of other states. A citizen of the United States who is not a citizen of this state has the same rights and duties as a citizen of this state not an elector.

History: En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907; re-en. Sec. 40, R.C.M. 1921; Cal. Pol. C. Sec. 60; re-en. Sec. 40, R.C.M. 1935; R.C.M. 1947, 83-407.

Cross-References

Privileges and immunities, Art. IV, sec. 2, U.S. Const.

Determination of residence, 1-1-215.

Qualifications of notary public, 1-5-402.

Qualifications for membership on licensing boards, 2-15-1841, 2-15-1842, 2-15-1844, 2-15-1851, 2-15-1873, 2-15-1881.

Qualifications for membership on agricultural research and marketing committees, 2-15-3002, 2-15-3103.

Membership on Judicial Standards Commission, 3-1-1101.

Right to initiate investigation of judicial officer, 3-1-1106.

Qualifications of Supreme Court Justice, 3-2-102.

Qualifications of District Court Judge, 3-5-202.

Qualifications of Justice of the Peace, 3-10-204.

Composition of juries, 3-15-101 through 3-15-105.

Membership on Districting and Apportionment Commission, 5-1-101.

Qualifications for county office, 7-4-2201.

Qualifications for district or township office, 7-4-2202.

Qualifications for County Attorney in large counties, 7-4-2701.

Qualifications for municipal office, 7-4-4104.

Permits for commercial timber harvest, 7-8-2609.

Qualifications of reserve police officers, 7-32-213.

Deferral of property taxes of Montana citizen serving in military, 10-1-606.

Participation in home guard, 10-1-701.

Eligibility for liquor license, 16-4-401.

Public contracts — preference to Montana bidders, 18-1-102.

Public contracts — preference to Montana labor, 18-2-403.

Participation in registration of heritage properties, 22-3-431.

Eligibility to be an auctioneer, 30-11-508, 30-11-509.

Banks — composition of board of directors, 32-1-322.

Building and loan associations — incorporators, 32-2-201.

Stock and mutual insurers — incorporators, 33-3-201.

Qualifications for trustees of cemetery care funds, 35-20-302.

Qualifications of investigator, pharmacy regulation, 37-7-104.

Qualifications for outfitter's or professional guide's license, 37-47-302, 37-47-303.

Qualifications to be licensed as private investigator or patrol operator, 37-60-304.

Qualifications of attorneys, 37-61-202, 37-61-208.

Qualifications of highway patrol officers, 44-1-401.

Eligibility to be a state coal mine inspector, 50-73-401.

Interstate Compact on Mental Health, 53-22-101.

Eligibility of railroad personnel to act as law officers, 69-14-1003.

Issuance of commercial permits for timber removal, 77-5-212.

Access to services of grain and seed laboratory, 80-5-110.

Policy toward nonresident big game hunters, 87-3-303.

CHAPTER 2

ILLEGAL DISCRIMINATION

Part 1 — General Provisions

49-2-101. Definitions.
49-2-102. Records to be kept.

Part 2 — Commission for Human Rights

49-2-201. Commission staff.
49-2-202. Authority to require posted notice.
49-2-203. Subpoena power.
49-2-204. Commission to adopt rules.

Part 3 — Prohibited Discriminatory Practices

49-2-301. Retaliation prohibited.
49-2-302. Aiding, coercing, or attempting.
49-2-303. Discrimination in employment.
49-2-304. Discrimination in public accommodations.
49-2-305. Discrimination in housing — exemptions.
49-2-306. Discrimination in financing and credit transactions.
49-2-307. Discrimination in education.

49-2-308. Discrimination by the state.
49-2-309. Discrimination in insurance and retirement plans.
49-2-310. Maternity leave — unlawful acts of employers.
49-2-311. Reinstatement to job following pregnancy-related leave of absence.

Part 4 — Exceptions to Prohibitions

49-2-401. Repealed.
49-2-402. "Reasonable" to be strictly construed.
49-2-403. Specific limits on justification.
49-2-404. Distinctions permitted for modesty or privacy.
49-2-405. Veterans' and handicapped persons' employment preference.

Part 5 — Enforcement by Commission

49-2-501. Filing complaints.
49-2-502. Notification of and action by commission.
49-2-503. Temporary relief by court order.
49-2-504. Informal settlement.
49-2-505. Contested case hearing.
49-2-506. Procedure upon a finding of discrimination.
49-2-507. Procedure upon failure to find discrimination.
49-2-508. Enforcement of commission order.
49-2-509. Filing a complaint in district court.
49-2-510. Procedures and remedies for enforcement of housing discrimination laws.

Part 6 — Penalties

49-2-601. Criminal penalty.
49-2-602. Intimidation or interference in right to be free from housing discrimination — penalties.

Part 1

General Provisions

49-2-101. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or to purchase property or services and defer payment therefor. It includes without limitation the right to incur and defer debt which is secured by residential real property.

(4) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale.

(5) "Creditor" means a person who, regularly or as a part of his business, arranges for the extension of credit for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(6) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; business, nursing, professional, secretarial, technical, or vocational school; or agent of an educational institution.

(7) "Employee" means any individual employed by an employer.

(8) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized either for private profit or to provide accommodations or services that are available on a nonmembership basis.

(9) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(10) "Financial institution" means a commercial bank, trust company, savings bank, finance company, savings and loan association, credit union, investment company, or insurance company.

(11) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(12) "Labor organization" means an organization or an agent of an organization organized for the purpose, in whole or in part, of collective bargaining, of dealing with employers concerning grievances or terms or conditions of employment, or of other mutual aid and protection of employees.

(13) "National origin" means ancestry.

(14) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees' associations, employers, employment agencies, or labor organizations.

(15) (a) "Physical or mental handicap" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based on, because of, on the basis of, or on the grounds of physical or mental handicap includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(16) (a) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public subject only to the conditions and limitations established by law and applicable to all persons alike. It includes without limitation a public inn, restaurant, eating house, hotel, roadhouse, place where food or alcoholic beverages or malt liquors are sold

for consumption, motel, soda fountain, soft drink parlor, tavern, nightclub, trailer park, resort, campground, barbershop, beauty parlor, bathroom, resthouse, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, or hospital and all other public amusement and business establishments.

(b) Public accommodation does not include an institution, club, or place of accommodation that proves that it is by its nature distinctly private. An institution, club, or place of accommodation may not be considered by its nature distinctly private if it has more than 100 members, provides regular meal service, and regularly receives payment for dues, fees, use of space, facilities, services, meals, or beverages, directly or indirectly, from or on behalf of nonmembers, for the furtherance of trade or business. For the purposes of this subsection(16), any lodge of a recognized national fraternal organization is considered by its nature distinctly private.

(17) "Staff" or "commission staff" means the staff of the commission for human rights.

History: **En. 64-305 by Sec. 1, Ch. 283, L. 1974; amd. Sec. 1, Ch. 121, L. 1975; amd. Sec. 2, Ch. 524, L. 1975; amd. Sec. 1, Ch. 35, L. 1977; R.C.M. 1947, 64-305; amd. Sec. 2, Ch. 177, L. 1979; amd. Sec. 1, Ch. 543, L. 1989; amd. Sec. 1, Ch. 241, L. 1991.**

Compiler's Comments

1991 Amendment: In definition of financial institution inserted "credit union"; deleted former definition of mental handicap that read: ""Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence"; substituted present definition of physical or mental handicap for former definition of physical handicap that read: ""Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device"; and made minor changes in style.

49-2-102. Records to be kept. The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights laws and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public.

History: **En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(2).**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Access to public records, 2-6-102, 2-6-104, 2-6-207, 2-6-307.

Part 2

Commission for Human Rights

Part Cross-References
Membership, allocation, 2-15-1706.

49-2-201. Commission staff. (1) The staff may include an attorney as legal counsel. He shall advise the commission in legal matters arising in the discharge of its duties, assist in the preparation and presentation of complaints to the commission, and represent the commission in legal actions to which it is a party. The attorney general shall perform this function at the request of the commission.

(2) In addition the commission may appoint hearing examiners to hear contested cases and petitions for declaratory rulings.

History: (1)En. 64-311 by Sec. 8, Ch. 283, L. 1974; amd. Sec. 9, Ch. 524, L. 1975; Sec. 64-311, R.C.M. 1947;(2)En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; Sec. 64-308, R.C.M. 1947; R.C.M. 1947, 64-308(part), 64-311.

Cross-References
Montana Administrative Procedure Act, Title 2, ch. 4.

49-2-202. Authority to require posted notice. The commission may require any employer, employment agency, labor union, educational institution, or financial institution or the owner, lessee, manager, agent, or employee of any public accommodation or housing accommodation subject to this chapter to post, in a conspicuous place on his premises or in the accommodation, a notice to be prepared or approved by the commission containing relevant information that the commission considers necessary to explain this chapter. Any person or institution subject to this section who refuses to comply with an order of the commission respecting the posting of a notice is guilty of a misdemeanor and punishable by a fine of not more than $50.

History: En. 64-314 by Sec. 12, Ch. 524, L. 1975; R.C.M. 1947, 64-314; amd. Sec. 3, Ch. 177, L. 1979.

49-2-203. Subpoena power. (1) The commission may subpoena witnesses, take the testimony of any person under oath, administer oaths, and, in connection therewith, require the production for examination of books, papers, or other tangible evidence relating to a matter either under investigation by the commission staff or in question before the commission. The commission may delegate the foregoing powers to a person within the staff for the purpose of investigating a complaint.

(2) Subpoenas issued pursuant to this section may be enforced as provided in 2-4-104 of the Montana Administrative Procedure Act.

History: En. 64-313 by Sec. 11, Ch. 524, L. 1975; R.C.M. 1947, 64-313.

49-2-204. Commission to adopt rules. The commission shall adopt procedural and substantive rules necessary to implement this chapter.

Rulemaking procedures shall comply with the requirements of the Montana Administrative Procedure Act.

History: En. 64-315 by Sec. 13, Ch. 524, L. 1975; R.C.M. 1947, 64-315.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Part 3

Prohibited Discriminatory Practices

Part Cross-References

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

49-2-301. Retaliation prohibited. It is an unlawful discriminatory practice for a person, educational institution, financial institution, or governmental entity or agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: Ap.p. Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; Sec. 64-306, R.C.M. 1947; Ap.p. Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; Sec. 64-312, R.C.M. 1947; R.C.M. 1947, 64-306(9), 64-312(2); amd. Sec. 4, Ch. 177, L. 1979.

49-2-302. Aiding, coercing, or attempting. It is unlawful for a person, educational institution, financial institution, or governmental entity or agency to aid, abet, incite, compel, or coerce the doing of an act forbidden under this chapter or to attempt to do so.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(1); amd. Sec. 5, Ch. 177, L. 1979.

Cross-References

When accountability exists, 45-2-302.

Inchoate offenses, Title 45, ch. 4.

49-2-303. Discrimination in employment. (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, marital status, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an employer or employee because of race, creed, religion, color, or national origin or because of his age, physical or mental handicap, marital status, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, marital status, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use an employment application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection (1) based on bona fide occupational qualifications shall be strictly construed.

(3) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

(4) The application of a hiring preference as provided for in 2-18-111 and 18-1-110 may not be construed to be a violation of this section.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(1), (2); amd. Sec. 1, Ch. 279, L. 1983; amd. Sec. 1, Ch. 342, L. 1985; amd. Sec. 3, Ch. 506, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (4) relating to Indian hiring preference.

Applicability: Section 7, Ch. 506, L. 1991, provided: "[This act] applies to hiring for vacancies in state agency or state construction project positions within an Indian reservation that occur after [the effective date of this act] [effective October 1, 1991]."

Cross-References

Work-study program, 20-25-707.

Equal pay for women for equivalent service, 39-3-104.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Exemption from association with labor organization on religious grounds, 39-31-204.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Right to refuse to participate in abortion, 50-20-111.

49-2-304. Discrimination in public accommodations. (1) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, marital status, race, age, physical or mental handicap, creed, religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, age, physical or mental handicap, color, or national origin.

(2) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for a licensee under Title 16, chapter 4, to exclude from its membership or from its services, goods, facilities, advantages, privileges, or accommodations any individual on the grounds of race, color, religion, creed, sex, marital status, age, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

(3) Nothing in this section prohibits public accommodations from giving or providing special benefits, incentives, discounts, or promotions for the benefit of individuals based on age.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(3); amd. Sec. 1, Ch. 3, L. 1989; amd. Sec. 2, Ch. 543, L. 1989; amd. Sec. 1, Ch. 454, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a), (1)(b), and (2), after "sex", inserted "marital status".

Cross-References

Health care facilities, 50-5-105.

Furnishing of medical assistance, 53-6-105.

Opportunity for religious observance in facilities for developmentally disabled, 53-20-142.

Opportunity for religious observance in mental health facilities, 53-21-142.

49-2-305. Discrimination in housing — exemptions. (1) It is an unlawful discriminatory practice for the owner, lessee, or manager having the right to sell, lease, or rent a housing accommodation or improved or unimproved property or for any other person:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, marital status, race, creed, religion, color, age, familial status, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of the housing accommodation or property;

(c) to make an inquiry of the sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or property for the purpose of discriminating on the basis of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin;

(d) to refuse to negotiate for a sale or to otherwise make unavailable or deny a housing accommodation or property because of sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin;

(e) to represent to a person that a housing accommodation or property is not available for inspection, sale, or rental because of that person's sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin when the housing accommodation or property is in fact available; or

(f) for profit, to induce or attempt to induce a person to sell or rent a housing accommodation or property by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin.

(2) The rental of sleeping rooms in a private residence designed for single-family occupancy in which the owner also resides is excluded from the provisions of subsection (1), provided that the owner rents no more than three sleeping rooms within the residence.

(3) It is an unlawful discriminatory practice to make, print, or publish or cause to be made, printed, or published any notice, statement, or advertisement that indicates any preference, limitation, or discrimination that is prohibited by subsection (1) or any intention to make or have such a preference, limitation, or discrimination.

(4) It is an unlawful discriminatory practice for a person to discriminate because of a physical or mental handicap of a buyer, lessee, or renter; a person residing in or intending to reside in or on the housing accommodation or property after it is sold, leased, rented, or made available; or any person associated with that buyer, lessee, or renter:

(a) in the sale, rental, or availability of the housing accommodation or property;

(b) in the terms, conditions, or privileges of a sale or rental of the housing accommodation or property; or

(c) in the provision of services or facilities in connection with the housing accommodation or property.

(5) For purposes of subsections (1) and (4), discrimination because of physical or mental handicap includes:

(a) refusal to permit, at the expense of the handicapped person, reasonable modifications of existing premises occupied or to be occupied by the handicapped person if the modifications may be necessary to allow the person full enjoyment of the premises, except that in the case of a lease or rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the lessor's or renter's agreement to restore the interior of the premises to the condition that existed before the modification, except for reasonable wear and tear;

(b) refusal to make reasonable accommodations in rules, policies, practices, or services when the accommodations may be necessary to allow the person equal opportunity to use and enjoy a housing accommodation or property; or

(c) (i) except as provided in subsection (5)(c)(ii), in connection with the design and construction of a covered multifamily housing accommodation, a failure to design and construct the housing accommodation in a manner that:

(A) provides at least one accessible building entrance on an accessible route;

(B) makes the public use and common use portions of the housing accommodation readily accessible to and usable by handicapped persons;

(C) provides that all doors designed to allow passage into and within all premises within the housing accommodation are sufficiently wide to allow passage by handicapped persons in wheelchairs; and

(D) ensures that all premises within the housing accommodation contain the following features of adaptive design:

(I) an accessible route into and through the housing accommodation;

(II) light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;

(III) reinforcements in bathroom walls to allow later installation of grab bars; and

(IV) usable kitchens and bathrooms that allow an individual in a wheelchair to maneuver about the space;

(ii) a covered multifamily housing accommodation that does not have at least one building entrance on an accessible route because it is impractical to do so due to the terrain or unusual characteristics of the site is not required to comply with the requirements of subsection (5)(c)(i).

(6) For purposes of subsection (5), the term "covered multifamily housing accommodation" means:

(a) a building consisting of four or more dwelling units if the building has one or more elevators; and

(b) ground floor units in a building consisting of four or more dwelling units.

(7) (a) It is an unlawful discriminatory practice for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin against a person in making available a transaction or in the terms or conditions of a transaction.

(b) For purposes of this subsection (7), the term "residential real estate-related transaction" means any of the following:

(i) the making or purchasing of loans or providing other financial assistance:

(A) for purchasing, constructing, improving, repairing, or maintaining a housing accommodation or property; or

(B) secured by residential real estate; or

(ii) the selling, brokering, or appraising of residential real property.

(8) It is an unlawful discriminatory practice to deny a person access to or membership or participation in a multiple-listing service; real estate brokers' organization; or other service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property or to discriminate against the person in the terms or conditions of access, membership, or participation because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin.

(9) It is an unlawful discriminatory practice to coerce, intimidate, threaten, or interfere with a person in the exercise or enjoyment of or because of his having exercised or enjoyed or having aided or encouraged any other person in the exercise or enjoyment of a right granted or protected by this section.

(10) The prohibitions of this section against discrimination because of age and familial status do not extend to housing for older persons. "Housing for older persons" means housing:

(a) provided under any state or federal program specifically designed and operated to assist elderly persons;

(b) intended for, and solely occupied by, persons 62 years of age or older; or

(c) intended and operated for occupancy by at least one person 55 years of age or older per unit in accordance with the provisions of 42 U.S.C. 3607(b)(2)(C) and (3) and 24 C.F.R. 100.304, as those sections read on October 1, 1989.

(11) The prohibitions of subsection (1) against discrimination because of age and familial status do not extend to rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than two families living independently of each other, if the owner actually maintains and occupies one of the living quarters as his residence.

(12) For purposes of this section, "familial status" means having a child or children who live or will live with a person. A distinction based on familial status includes one that is based on the age of a child or children who live or will live with a person.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(4); amd. Sec. 6, Ch. 177, L. 1979; amd. Sec. 1, Ch. 335, L. 1981; amd. Sec. 1, Ch. 503, L. 1989; amd. Sec. 1, Ch. 328, L. 1991; amd. Sec. 2, Ch. 454, L. 1991; amd. Sec. 1, Ch. 801, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 328 in (10)(c) substituted reference to 42 U.S.C. 3607(b)(2)(C) and (3) for reference to 42 U.S.C. 3605(b)(2)(C) and (3). Amendment effective April 4, 1991.

Chapter 454 in (1)(a), (1)(b), (1)(c), and (1)(d), after "sex", inserted "marital status".

Chapter 801 at beginning of (1) deleted "Except when the distinction is based on reasonable grounds" and after "or" inserted "for any"; in (1)(c), before "inquiry", deleted "written or oral", after "inquiry" deleted "or record", after "age" inserted "familial status", and after "property" inserted final clause concerning purpose to discriminate on basis of prohibited category; in (1)(d), after "unavailable", inserted "or deny"; inserted (1)(e) establishing as unlawful practice representation that housing or property is unavailable for inspection, sale, or rent because of sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin; inserted (1)(f) establishing as unlawful practice inducing or attempting to induce for profit the sale or rental of housing or property by representations regarding entry or prospective entry into neighborhood of persons of particular sex, marital status, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin; in (2) substituted "owner" for "landlord" and at end, after "subsection (1)", inserted provision restricting number of sleeping rooms rented; inserted (4) establishing as unlawful discriminatory practice discrimination in sale, rental, or availability of housing or property, in terms or privileges of sale or rental, or in provision of services or facilities in housing or property because of physical or mental handicap of buyer, lessee, or renter, of person residing in housing or property after sale, or of person associated with buyer, lessee, or renter; inserted (5) outlining what is included in discrimination because of physical or mental handicap; inserted (6) defining covered multifamily housing accommodation; inserted (7) establishing as unlawful discriminatory practice for person whose business includes engaging in residential real estate-related transactions discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in making transaction available or in conditions of transaction and defining residential real estate-related transaction; inserted (8) establishing as unlawful discriminatory practice denial of assess to or membership or participation in particular service, organization, or facility relating to selling, leasing, or renting housing or property or discrimination in terms or conditions of access, membership, or participation because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin; inserted (9) establishing as unlawful discriminatory practice coercion, intimidation, threat, or interference with exercise or enjoyment of granted or protected housing accommodation or property right; in (11) substituted reference to subsection (1) for "this section"; and made minor changes in style.

Retroactive Applicability: Section 2, Ch. 328, L. 1991, provided: "[This act] applies retroactively, within the meaning of 1-2-109, to causes of action arising on or after October 1, 1989."

Cross-References

Urban renewal, 7-15-4207.

49-2-306. Discrimination in financing and credit transactions. (1) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against the applicant because of sex, marital status, race, creed, religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(2) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, religion, creed, national origin, age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court of record.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(5), (8).

Cross-References

State District Court jurisdiction, Title 3, ch. 5, part 3.

Municipal Court jurisdiction, 3-6-103.

Power to contract, Title 28, ch. 2, part 2.

No discrimination by certain insurers, 33-18-210.

Medical and health insurance — continuation of coverage for handicapped child, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004.

Minors' power to contract, Title 41, ch. 1, part 3.

49-2-307. Discrimination in education. It is an unlawful discriminatory practice for an educational institution:

(1) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, conditions, or privileges of the institution because of race, creed, religion, sex, marital status, color, age, physical handicap, or national origin or because of mental handicap, unless based on reasonable grounds;

(2) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(3) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or discrimination based on the race, color, creed, religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission; or

(4) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members, through a quota or otherwise, because of race, color, sex, marital status, age, creed, religion, physical or mental handicap, or national origin.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(7).

Cross-References

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Exemption from immunization requirements on religious grounds, 20-5-405.

49-2-308. Discrimination by the state. (1) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, creed, religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person of a particular race, creed, religion, sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policymaking positions on the immediate staff of an elected officer of the executive branch provided for in Article VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in Article VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(2) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in subsection (1).

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(6); amd. Sec. 3, Ch. 682, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) concerning consideration of factors in adoption proceedings. Amendment effective July 1, 1991.

Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.

Aid prohibited to sectarian schools, Art. X, sec. 6, Mont. Const.

Executive branch officers and agencies, Title 2, ch. 15.

Classified service employees — municipal commission-manager government, 7-3-4415.

Sex discrimination — records of military discharges, 7-4-2614.

Urban renewal, 7-15-4207.

Employment by county Board of Park Commissioners, 7-16-2326.

Use of hospital district facilities, 7-34-2123.

Veterans' benefits, Title 10, ch. 2, part 3.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

Special education supervisor, 20-3-103.

Exemption from school immunization requirements on religious grounds, 20-5-405.

Special education for exceptional children, Title 20, ch. 7, part 4.

Surrogate parent to represent interests of handicapped student, 20-7-461 through 20-7-463.

Educational programs for gifted children, Title 20, ch. 7, part 9.

State School for the Deaf and Blind, Title 20, ch. 8.

Work-study program, 20-25-707.

Library services for the handicapped, 22-1-103.

Religious beliefs of witness not relevant to credibility, Rule 610, M.R.Ev. (see Title 26, ch. 10).

Marital status irrelevant to parent-child relationship, 40-6-103.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Exemption from prenatal blood tests on religious grounds, 50-19-109.

Right to refuse to participate in abortion, 50-20-111.

Furnishing of medical assistance, 53-6-105.

Community programs and homes for the physically disabled, Title 53, ch. 19, part 1.

Community-based services for developmentally disabled, 53-20-212.

Community mental health centers, 53-21-206.

Ineligibility of handicapped for driver's license, 61-5-105.

Homestead exemption, Title 70, ch. 32, part 2.

Surviving spouse exempt from inheritance tax, 72-16-313.

Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

49-2-309. Discrimination in insurance and retirement plans. (1) It is an unlawful discriminatory practice for any financial institution or person to discriminate solely on the basis of sex or marital status in the issuance or operation of any type of insurance policy, plan, or coverage or in any pension or retirement plan, program, or coverage, including discrimination in regard to rates or premiums and payments or benefits.

(2) This section does not apply to any insurance policy, plan, coverage, or any pension or retirement plan, program, or coverage in effect prior to October 1, 1985.

History: En. Secs. 1, 3, Ch. 531, L. 1983.

49-2-310. Maternity leave — unlawful acts of employers. It shall be unlawful for an employer or his agent to:

(1) terminate a woman's employment because of her pregnancy;

(2) refuse to grant to the employee a reasonable leave of absence for such pregnancy;

(3) deny to the employee who is disabled as a result of pregnancy any compensation to which she is entitled as a result of the accumulation of disability or leave benefits accrued pursuant to plans maintained by her employer, provided that the employer may require disability as a result of pregnancy to be verified by medical certification that the employee is not able to perform her employment duties; or

(4) require that an employee take a mandatory maternity leave for an unreasonable length of time.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(1); amd. Sec. 1, Ch. 285, L. 1983; MCA 1981, 39-7-203; redes. 49-2-310 by Sec. 2, Ch. 285, L. 1983.

49-2-311. Reinstatement to job following pregnancy-related leave of absence. Upon signifying her intent to return at the end of her leave of absence, such employee shall be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits, and other service credits unless, in the case of a private employer, the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. 41-2602 by Sec. 2, Ch. 320, L. 1975; R.C.M. 1947, 41-2602(2); MCA 1981, 39-7-204; redes. 49-2-311 by Sec. 2, Ch. 285, L. 1983.

Part 4

Exceptions to Prohibitions

49-2-401. Repealed. Sec. 11, Ch. 801, L. 1991.

History: En. 64-306.1 by Sec. 4, Ch. 524, L. 1975; amd. Sec. 1, Ch. 27, L. 1977; R.C.M. 1947, 64-306.1(1); amd. Sec. 7, Ch. 177, L. 1979.

49-2-402. "Reasonable" to be strictly construed. Any grounds urged as a "reasonable" basis for an exemption under any section of this chapter shall be strictly construed.

History: En. 64-306 by Sec. 2, Ch. 283, L. 1974; amd. Sec. 2, Ch. 121, L. 1975; amd. Sec. 3, Ch. 524, L. 1975; amd. Sec. 7, Ch. 38, L. 1977; R.C.M. 1947, 64-306(10).

49-2-403. Specific limits on justification. (1) Except as permitted in 49-2-303(3) and (4) and 49-3-201(5), sex, marital status, age, physical or mental handicap, race, creed, religion, color, or national origin may not comprise justification for discrimination except for the legally demonstrable purpose of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory criterion in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(1), (2); amd. Sec. 2, Ch. 342, L. 1985; amd. Sec. 4, Ch. 506, L. 1991.

Compiler's Comments

1991 Amendment: In (1) inserted reference to subsection (4) of 49-2-303 and after "justification for discrimination" substituted "except" for "unless the nature of the service requires the discrimination".

Applicability: Section 7, Ch. 506, L. 1991, provided: "[This act] applies to hiring for vacancies in state agency or state construction project positions within an Indian reservation that occur after [the effective date of this act] [effective October 1, 1991]."

Cross-References

Power to contract, Title 28, ch. 2, part 2.

Minors' power to contract, Title 41, ch. 1, part 3.

49-2-404. Distinctions permitted for modesty or privacy. Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy.

History: En. 64-307 by Sec. 3, Ch. 283, L. 1974; amd. Sec. 3, Ch. 121, L. 1975; amd. Sec. 5, Ch. 524, L. 1975; amd. Sec. 8, Ch. 38, L. 1977; R.C.M. 1947, 64-307(3).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

49-2-405. Veterans' and handicapped persons' employment preference. The application of an employment preference as provided for in Title 39, chapter 29 or 30, and 10-2-402 by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. Sec. 12, Ch. 1, Sp. L. 1983; amd. Sec. 15, Ch. 646, L. 1989.

Compiler's Comments

Termination Provision Repealed: Section 1, Ch. 12, L. 1991, repealed sec. 19, Ch. 646, L. 1989, which terminated the 1989 amendments to this section July 1, 1991. Repealer effective February 7, 1991.

Part 5

Enforcement by Commission

49-2-501. Filing complaints. (1) A complaint may be filed by or on behalf of any person claiming to be aggrieved by any discriminatory practice prohibited by this chapter. The complaint must be in the form of a written, verified complaint stating the name and address of the person, educational institution, financial institution, or governmental entity or agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice. The commission staff may file a complaint in like manner when a discriminatory practice comes to its attention.

(2) (a) Except as provided in 49-2-510 and subsection (2)(b) of this section, a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(b) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(c) Any complaint not filed within the times set forth herein may not be considered by the commission.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(1); amd. Sec. 8, Ch. 177, L. 1979; amd. Sec. 1, Ch. 415, L. 1987; amd. Sec. 3, Ch. 801, L. 1991.

Compiler's Comments

1991 Amendment: In (2)(a) inserted reference to 49-2-510; and made minor change in style.

49-2-502. Notification of and action by commission. The staff shall notify the commission in writing of all complaints filed with the commission. The commission shall meet a minimum of four times a year to hear and act upon all complaints filed.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(part).

49-2-503. Temporary relief by court order. At any time after a complaint is filed under this chapter, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(3); amd. Sec. 4, Ch. 801, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning after "chapter", substituted language authorizing District Court, upon application by Commission or complainant, to enter preliminary injunction against respondent for former language that read: "alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurs or in the county in which a respondent resides or transacts business seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint"; and deleted (2) that read: "(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices".

Cross-References

Injunctions, Title 27, ch. 19.

49-2-504. Informal settlement. The commission staff shall informally investigate the matters set out in a filed complaint promptly and impartially. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by conference, conciliation, and persuasion.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(4).

49-2-505. Contested case hearing. (1) If the informal efforts to eliminate the alleged discrimination are unsuccessful, the staff shall inform the commission of the failure and the commission shall cause written notice to be served, together with a copy of the complaint, requiring the person, educational institution, financial institution, or governmental entity or agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The hearing must be held by the commission in the county where the unlawful conduct is alleged to have occurred unless the person, institution, entity, or agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act except as provided in 49-2-508.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorneys' fees. The court in its discretion may allow the prevailing party reasonable attorneys' fees. An action under this section must comply with the Montana Rules of Civil Procedure.

History: En. 64-308 by Sec. 5, Ch. 283, L. 1974; amd. Sec. 6, Ch. 524, L. 1975; R.C.M. 1947, 64-308(5), (6); amd. Sec. 9, Ch. 177, L. 1979; amd. Sec. 1, Ch. 709, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Montana Rules of Civil Procedure, Title 25, ch. 20.

49-2-506. Procedure upon a finding of discrimination. (1) If the commission finds that a person, institution, entity, or agency against whom a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order him or it to refrain from engaging in the discriminatory conduct. The order may:

(a) prescribe conditions on the accused's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against;

(c) require a report on the manner of compliance.

(2) Except as provided in 49-2-510, the order may not require the payment of any punitive damages.

(3) Whenever a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with that order or agreement, the period of time may not be more than 3 years.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(1), (2), (4); amd. Sec. 10, Ch. 177, L. 1979; amd. Sec. 5, Ch. 801, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (2) inserted exception clause.

49-2-507. Procedure upon failure to find discrimination. If the commission finds that a person, institution, entity, or agency against whom or which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.

49-2-508. Enforcement of commission order. If the commission's order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order.

History: En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310; amd. Sec. 1, Ch. 539, L. 1985.

Cross-References

Venue in civil actions, Title 25, ch. 2.

Injunctions, Title 27, ch. 19.

49-2-509. Filing a complaint in district court. (1) Except as provided in subsection (2) or with respect to complaints alleging a violation of 49-2-305, the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-2-505; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-2-505, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-2-501 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. Except as provided in 49-2-510, if the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the claim shall be barred.

(6) If the district court finds, in an action under this section, that a person, institution, entity, or agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-2-506 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter.

History: En. Sec. 1, Ch. 505, L. 1983; amd. Sec. 1, Ch. 511, L. 1987; amd. Sec. 6, Ch. 801, L. 1991.

Compiler's Comments

1991 Amendment: In (1) inserted "or with respect to complaints alleging a violation of 49-2-305"; and in (5), at beginning of second sentence, inserted exception clause.

49-2-510. Procedures and remedies for enforcement of housing discrimination laws. (1) A complaint may be filed with the commission by or on behalf of a person claiming to be aggrieved by any discriminatory practice prohibited by 49-2-305. The complaint must be in written form and must be filed with the commission within 1 year after the alleged unlawful discriminatory practice occurred or was discovered.

(2) (a) Except as provided in subsection (2)(b), if the commission, in a hearing under 49-2-505, finds that a person, institution, entity, or agency against whom a complaint was filed under this part has engaged in a discriminatory practice in violation of 49-2-305, the commission may, in addition to the remedies and injunctive and other equitable relief provided by 49-2-506, to vindicate the public interest, assess a civil penalty:

(i) in an amount not exceeding $10,000 if the respondent has not been found to have committed any prior discriminatory housing practice in violation of 49-2-305;

(ii) in an amount not exceeding $25,000 if the respondent has been found to have committed one other discriminatory housing practice in violation of 49-2-305 during the 5-year period ending on the date of the filing of the complaint; and

(iii) in an amount not exceeding $50,000 if the respondent has been found to have committed two or more discriminatory housing practices in violation of 49-2-305 during the 7-year period ending on the date of the filing of the complaint.

(b) If the acts constituting the discriminatory housing practice that is the object of the complaint are committed by the same natural person who has been previously found to have committed acts constituting a discriminatory housing practice, the civil penalties provided in subsections (2)(a)(ii) and (2)(a)(iii) may be imposed without regard to the period of time within which any prior discriminatory housing practice occurred.

(3) In the case of an order with respect to a discriminatory housing practice in violation of 49-2-305 that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, no later than 30 days after the date of the issuance of the order or, if the order is judicially reviewed, no later than 30 days after the order is in substance affirmed:

(a) send copies of the findings of fact, the conclusions of law, and the order to the licensing or regulatory agency; and

(b) recommend to the licensing or regulatory agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

(4) (a) When a complaint is filed under 49-2-305, a complainant, respondent, or aggrieved person on whose behalf the complaint was filed may elect to have the claims decided in a civil action in lieu of a hearing under 49-2-505. The election must be made no later than 20 days after receipt by the electing person of service of notice of certification for hearing under 49-2-505. The

person making the election shall give notice to the commission and to all other complainants and respondents to whom the complaint relates. Within 30 days after the election is made, the commission shall commence a civil action in an appropriate district court on behalf of the aggrieved person if the commission staff has made a finding that the allegations of the complaint are supported by substantial evidence. If the commission staff has made a finding that the allegations of the complaint are not supported by substantial evidence, the complainant may commence a civil action in an appropriate district court in accordance with subsection (5). An aggrieved person with respect to the issues to be determined in a civil action brought by the commission staff may intervene in the action.

(b) The commission may not continue administrative proceedings on a complaint after an election is made in accordance with subsection (4)(a).

(5) (a) An aggrieved person may commence a civil action in an appropriate district court within 2 years after an alleged unlawful discriminatory practice under 49-2-305 occurred or was discovered or within 2 years of the breach of a conciliation agreement entered into under 49-2-504 in a case alleging a violation of 49-2-305. The computation of the 2-year period does not include any time during which an administrative proceeding under this title was pending with respect to a complaint alleging a violation of 49-2-305. The tolling of the time limit for commencing a civil action does not apply to actions arising from breach of a conciliation agreement.

(b) An aggrieved person may commence a civil action under this subsection for a violation of 49-2-305 whether or not a complaint has been filed under 49-2-501 and without regard to the status of a complaint filed with the commission except as provided in subsection (5)(d). If the commission has obtained a conciliation agreement with the consent of the aggrieved person, an action may not be filed under this subsection by the aggrieved person regarding the alleged violation of 49-2-305 that forms the basis for the complaint except for the purpose of enforcing the terms of the agreement.

(c) The commission may not continue administrative proceedings on a complaint after the beginning of a trial of a civil action commenced by the aggrieved party under this subsection (5) seeking relief with respect to the same alleged violation of 49-2-305.

(d) An aggrieved person may not commence a civil action under this subsection (5) with respect to an alleged violation of 49-2-305 if the commission has commenced a hearing on the record under 49-2-505 regarding the same complaint.

(e) Upon application by a person alleging a violation of 49-2-305 in a civil action under this subsection (5) or by a person against whom the violation is alleged, the court may:

(i) appoint an attorney for the applicant; or

(ii) authorize the commencement or continuation of a civil action without the payment of fees, costs, or security if, in the opinion of the court, the applicant is financially unable to bear the costs of the civil action.

(f) Upon timely application, the commission may intervene in a civil action brought under this subsection (5) if the commission certifies that the case is of general public importance. Upon intervention, the commission may obtain the same relief that would be available to the commission under subsection (7).

(6) If the court finds that a person, institution, entity, or agency against whom a complaint was filed under this section has engaged in a discriminatory practice in violation of 49-2-305, the court may, in addition to the other remedies and injunctive and other equitable relief provided under 49-2-506, award punitive damages. The court may also award attorney fees to the prevailing party.

(7) (a) Whenever the commission has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice in violation of 49-2-305 or that a group of persons has been discriminated against in violation of 49-2-305 and the denial raises an issue of general public importance, the commission may commence a civil action in an appropriate district court. The commission may also commence a civil action in any appropriate district court for relief regarding breach of a conciliation agreement in a case regarding an alleged violation of 49-2-305 if the commission is a party to the agreement.

(b) The commission may file a civil action under this subsection (7) within 18 months after the alleged breach of the conciliation agreement or unlawful discriminatory practice occurred or was discovered.

(c) In a civil action under this subsection (7), the court may, in addition to the remedies provided under 49-2-506, assess a civil penalty against the respondent:

(i) in an amount not exceeding $50,000 for a first violation; and

(ii) in an amount not exceeding $100,000 for any subsequent violation.

(d) Upon timely application, a person may intervene in a civil action under this subsection (7) that involves an alleged violation of 49-2-305 with respect to which the intervenor is an aggrieved person.

(8) Civil penalties under this section must be paid to the state treasurer to be deposited in an account in the state special revenue fund to be used by the commission for housing discrimination enforcement.

History: En. Sec. 2, Ch. 801, L. 1991.

Cross-References

Access to housing accommodations, 49-4-212.

Part 6

Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

Cross-References

Obstructing a public servant, 45-7-302.

Place of imprisonment, 46-18-211.

49-2-602. Intimidation or interference in right to be free from housing discrimination — penalties. (1) It is unlawful for a person, whether or not acting under color of law, by force or threat of force to purposefully or knowingly injure, intimidate, or interfere with or attempt to injure, intimidate, or interfere with:

(a) a person because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin and because the person is or has been:

(i) selling, purchasing, renting, leasing, financing, or occupying or contracting or negotiating for the sale, purchase, lease, rental, financing, or occupation of any housing accommodation or property; or

(ii) applying for or participating in any service, organization, or facility relating to the business of selling, leasing, or renting housing accommodations or property;

(b) a person because he is or has been:

(i) participating, without discrimination because of sex, race, creed, religion, age, familial status, physical or mental handicap, color, or national origin in any of the activities, services, organizations, or facilities described in this subsection (1); or

(ii) affording another person or class of persons opportunity or protection to participate in those activities, services, organizations, or facilities; or

(c) a citizen because he is or has been, or in order to discourage him or any other citizen from, lawfully aiding or encouraging other persons to participate in any of the activities, services, organizations, or facilities described in this subsection (1) or because he is or has been lawfully participating in speech or peaceful assembly opposing any denial of the opportunity to participate.

(2) A person who violates a provision of subsection (1):

(a) shall be fined not more than $1,000 or imprisoned for not more than 1 year, or both;

(b) if bodily injury results, shall be fined not more than $10,000 or imprisoned for not more than 10 years, or both; or

(c) if death results, shall be subject to imprisonment for any term of years or for life.

History: En. Sec. 9, Ch. 801, L. 1991.

Cross-References

Access to housing accommodations, 49-4-212.

CHAPTER 3

GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 — General Provisions

49-3-101. Definitions.
49-3-102. What local governmental units affected.
49-3-103. Permitted distinctions.
49-3-104. Quotas not required.
49-3-105. Repealed.
49-3-106. Rulemaking authority.

Part 2 — Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel.
49-3-202. Employment referrals and placement services.
49-3-203. Educational, counseling, and training programs.
49-3-204. Licensing.
49-3-205. Governmental services.
49-3-206. Distribution of governmental funds.
49-3-207. Nondiscrimination provision in all public contracts.
49-3-208. Public accommodations laws.
49-3-209. Retaliation prohibited.

Part 3 — Enforcement and Remedies

49-3-301. Cooperation with commission for human rights.
49-3-302. Repealed.
49-3-303. Repealed.
49-3-304. Filing complaints.
49-3-305. Form of complaint.
49-3-306. Temporary relief by court order.
49-3-307. Informal settlement.
49-3-308. Contested case hearing before commission.
49-3-309. Procedure upon a finding of discrimination by commission.
49-3-310. Procedure upon failure by commission to find discrimination.
49-3-311. Enforcement of commission order.
49-3-312. Filing a complaint in district court.

Chapter Cross-References

Special consideration for military personnel and veterans, Art. II, sec. 35, Mont. Const.

Variation of oath to suit witness' belief, 1-6-103.

Religious beliefs of witness not relevant to credibility, Rule 610, M.R.Ev. (see Title 26, ch. 10).

Marital status irrelevant to parent-child relationship, 40-6-103.

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

Part 1

General Provisions

49-3-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility, which may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 2-15-1706.

(3) (a) "Physical or mental handicap" means:

(i) a physical or mental impairment that substantially limits one or more of a person's major life activities;

(ii) a record of such an impairment; or

(iii) a condition regarded as such an impairment.

(b) Discrimination based upon, because of, on the basis of, on the grounds of, or with regard to physical or mental handicap includes the failure to make reasonable accommodations that are required by an otherwise qualified person who has a physical or mental handicap. Any accommodation that would require an undue hardship or that would endanger the health or safety of any person is not a reasonable accommodation.

(4) "State or local governmental agency" means:

(a) any branch, department, office, board, bureau, commission, agency, university unit, college, or other instrumentality of state government; or

(b) a county, city, town, school district, or other unit of local government and any instrumentality of local government.

(5) "Qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task.

History: (1)En. 64-316 by Sec. 1, Ch. 487, L. 1975; Sec. 64-316, R.C.M. 1947; (2)En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; Sec. 64-319, R.C.M. 1947; R.C.M. 1947, 64-316, 64-319(part); amd. Sec. 13, Ch. 177, L. 1979; amd. Sec. 1, Ch. 540, L. 1983; amd. Sec. 2, Ch. 241, L. 1991.

Compiler's Comments

1991 Amendment: Deleted former definition of mental handicap that read: ""Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence"; substituted present definition of physical or mental handicap for former definition of physical handicap that read: ""Physical handicap" means a physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy. It includes without limitation any degree of paralysis; amputation; lack of physical coordination; blindness or visual impediment; deafness or hearing impediment; muteness or speech impediment; or physical reliance on a guide dog for the blind, a wheelchair, or any other remedial appliance or device"; and made minor changes in style.

49-3-102. What local governmental units affected. Local governmental units affected by this chapter include all political subdivisions of the state, including school districts.

History: En. 64-327 by Sec. 12, Ch. 487, L. 1975; R.C.M. 1947, 64-327.

Cross-References

Applicability to community college districts, 20-15-403.

49-3-103. Permitted distinctions. (1) Nothing in this chapter prohibits any public or private employer:

(a) from enforcing a differentiation based on marital status, age, or physical or mental handicap when based on a bona fide occupational qualification reasonably necessary to the normal operation of the particular business or where the differentiation is based on reasonable factors other than age;

(b) from observing the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade the purposes of this chapter, except that an employee benefit plan may not excuse the failure to hire any individual; or

(c) from discharging or otherwise disciplining an individual for good cause.

(2) The application of an employment preference as provided for in 2-18-111, 10-2-402, 18-1-110, and Title 39, chapter 29 or 30, by a public employer as defined in 39-29-101 and 39-30-103 may not be construed to constitute a violation of this chapter.

History: En. 64-328 by Sec. 13, Ch. 487, L. 1975; R.C.M. 1947, 64-328; amd. Sec. 2, Ch. 279, L. 1983; (2) En. Sec. 13, Ch. 1, Sp. L. 1983; amd. Sec. 16, Ch. 646, L. 1989; amd. Sec. 5, Ch. 506, L. 1991.

Compiler's Comments

1991 Amendment: In (2) inserted reference to 2-18-111 and 18-1-110.

Applicability: Section 7, Ch. 506, L. 1991, provided: "[This act] applies to hiring for vacancies in state agency or state construction project positions within an Indian reservation that occur after [the effective date of this act] [effective October 1, 1991]."

Termination Provision Repealed: Section 1, Ch. 12, L. 1991, repealed sec. 19, Ch. 646, L. 1989, which terminated the 1989 amendments to this section July 1, 1991. Repealer effective February 7, 1991.

49-3-104. Quotas not required. Nothing in this chapter shall be construed as requiring the institution of a system of quotas for representation of any sex, age, religious, racial, ethnic, or other group affected by this chapter.

History: En. 64-330 by Sec. 15, Ch. 487, L. 1975; R.C.M. 1947, 64-330.

49-3-105. Repealed. Sec. 11, Ch. 801, L. 1991.

History: En. Sec. 4, Ch. 540, L. 1983.

49-3-106. Rulemaking authority. The commission may adopt rules necessary for the implementation of this chapter, in accordance with the Montana Administrative Procedure Act. The rules may include but are not limited to procedural rules for:

(1) filing of complaints;

(2) conducting investigations of complaints;

(3) petitioning for a declaratory ruling; and

(4) conduct of hearings.

History: En. Sec. 2, Ch. 540, L. 1983; amd. Sec. 7, Ch. 801, L. 1991.

Compiler's Comments

1991 Amendment: In (3), after "ruling", deleted "as provided in 49-3-105".

Part 2

Duties of Governmental Agencies and Officials

49-3-201. Employment of state and local government personnel. (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state and local government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

(3) The department of administration shall insure that the entire examination process, including appraisal of qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons.

(5) Compliance with 2-2-302 and 2-2-303, which prohibit nepotism in public agencies, may not be construed as a violation of this section.

History: En. 64-317 by Sec. 2, Ch. 487, L. 1975; amd. Sec. 9, Ch. 38, L. 1977; R.C.M. 1947, 64-317; amd. Sec. 14, Ch. 177, L. 1979; amd. Sec. 3, Ch. 342, L. 1985.

Cross-References

State employee classification, compensation, and benefits, Title 2, ch. 18.

Classified service employees — municipal commission-manager government, 7-3-4415.

Employment by county Board of Park Commissioners, 7-16-2326.

Employment of veterans, Title 10, ch. 2, part 2.

Work-study program, 20-25-707.

Equal pay for women for equivalent service, 39-3-104.

Exclusion of handicapped from minimum wage and overtime compensation laws, 39-3-406.

Women in employment, Title 39, ch. 7.

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Exemption from association with labor organization on religious grounds, 39-31-204.

Right to refuse to participate in sterilization, Title 50, ch. 5, part 5.

Right to refuse to participate in abortion, 50-20-111.

49-3-202. Employment referrals and placement services. (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. A job request indicating an intention to exclude a person because of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing such programs.

(3) The department of labor and industry shall cooperate with the commission for human rights in encouraging and enforcing compliance by employers and labor unions with the policy of this chapter and promotion of equal employment opportunities.

History: En. 64-320 by Sec. 5, Ch. 487, L. 1975; amd. Sec. 12, Ch. 38, L. 1977; R.C.M. 1947, 64-320.

Cross-References

State employment service, 39-1-102, 39-51-307.

49-3-203. Educational, counseling, and training programs. All educational, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state and local governmental agencies or in which state and local governmental agencies participate must be open to all persons, who must be accepted on the basis of merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Such programs must be conducted to encourage the full development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs must be encouraged to involve larger numbers of participants from those segments of the labor force in which the need for upgrading levels of skill is greatest.

History: En. 64-323 by Sec. 8, Ch. 487, L. 1975; amd. Sec. 14, Ch. 38, L. 1977; R.C.M. 1947, 64-323; amd. Sec. 15, Ch. 177, L. 1979.

Cross-References

No aid to sectarian schools, Art. X, sec. 6, Mont. Const.

Nondiscrimination in education, Art. X, sec. 7, Mont. Const.

Special education supervisor, 20-3-103.

Exemption from immunization requirements on religious grounds, 20-5-405.

Special education for exceptional children, Title 20, ch. 7, part 4.

Educational programs for gifted children, Title 20, ch. 7, part 9.

State School for the Deaf and Blind, Title 20, ch. 8.

Charges for tuition — waivers, 20-25-421.

Exemption from barber apprenticeship fees, 37-30-307.

Exemption from cosmetology examination and fees, 37-31-308.

49-3-204. Licensing. (1) A state or local governmental agency may not grant, deny, or revoke the license or charter of a person on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. Each state or local governmental agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this chapter. This subsection does not prevent the department of family services from licensing a child-placing agency that gives nonarbitrary consideration in adoption proceedings to relevant information concerning the factors listed in this subsection. Consideration of religious factors by a licensed child-placing agency that is affiliated with a particular religious faith is not arbitrary consideration of religion within the meaning of this section.

(2) The state may not issue or renew a license under Title 16, chapter 4, to an applicant or licensee that excludes from its membership or from its goods, services, facilities, privileges, or advantages any individual on the grounds of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin. This subsection does not apply to any lodge of a recognized national fraternal organization.

History: En. 64-321 by Sec. 6, Ch. 487, L. 1975; amd. Sec. 13, Ch. 38, L. 1977; R.C.M. 1947, 64-321; amd. Sec. 16, Ch. 177, L. 1979; amd. Sec. 3, Ch. 543, L. 1989; amd. Sec. 4, Ch. 682, L. 1991.

Compiler's Comments

1991 Amendment: In (1) inserted last two sentences concerning consideration of factors in adoption proceedings and an agency affiliated with a religion. Amendment effective July 1, 1991.

Cross-References

Restrictions on licensing of former criminal offenders, 23-4-201, 23-5-176, 32-2-409, 37-1-201 through 37-1-205, 37-47-302, 37-47-341.

Professions and Occupations, Title 37.

Licensure of criminal offenders, Title 37, ch. 1, part 2.

Exemptions from licensure as physician — Christian Science practitioners and mohels, 37-3-103.

Licensing and standards for spiritual healing institutions, 50-5-104.

Special license plates for disabled veterans, handicapped persons, and ex-prisoners of war, 61-3-446, 61-3-452, 61-3-453.

Ineligibility of handicapped for driver's license, 61-5-105.

Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

49-3-205. Governmental services. (1) All services of every state or local governmental agency must be performed without discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

(2) No state or local facility may be used in the furtherance of any discriminatory practice, nor may a state or local governmental agency become a party to an agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state or local governmental agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this chapter and shall initiate comprehensive programs to remedy any defect found to exist.

(4) This section does not prevent the nonarbitrary consideration in adoption proceedings of relevant information concerning the factors listed in this section.

History: En. 64-318 by Sec. 3, Ch. 487, L. 1975; amd. Sec. 10, Ch. 38, L. 1977; R.C.M. 1947, 64-318; amd. Sec. 17, Ch. 177, L. 1979; amd. Sec. 5, Ch. 682, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (4) concerning consideration of factors in adoption proceedings. Amendment effective July 1, 1991.

Cross-References

Sex discrimination — records of military discharges, 7-4-2614.

Urban renewal, 7-15-4207.

Use of hospital district facilities, 7-34-2123.

Accessibility of polling places, Title 13, ch. 3, part 2.

Library services for the handicapped, 22-1-103.

Health care facilities, 50-5-105.

Exemption from prenatal blood tests on religious grounds, 50-19-109.

Furnishing of medical assistance, 53-6-105.

Opportunity for religious observance in facilities for developmentally disabled, 53-20-142.

Community-based services for developmentally disabled, 53-20-212.

Opportunity for religious observance in mental health facilities, 53-21-142.

Community mental health centers, 53-21-206.

49-3-206. Distribution of governmental funds. Race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin may not be considered as limiting factors with regard to applicants' qualifications for benefits authorized by law in state or locally administered programs involving the distribution of funds; nor may state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices.

History: En. 64-324 by Sec. 9, Ch. 487, L. 1975; amd. Sec. 15, Ch. 38, L. 1977; R.C.M. 1947, 64-324.

Cross-References

Furnishing of medical assistance, 53-6-105.

49-3-207. Nondiscrimination provision in all public contracts. Every state or local contract or subcontract for construction of public buildings or for other public work or for goods or services shall contain a provision that all hiring must be on the basis of merit and qualifications and a provision that there may be no discrimination on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin by the persons performing the contract.

History: En. 64-319 by Sec. 4, Ch. 487, L. 1975; amd. Sec. 11, Ch. 38, L. 1977; R.C.M. 1947, 64-319(part); amd. Sec. 18, Ch. 177, L. 1979.

Cross-References

Urban renewal, 7-15-4207.

Public Contracts, Title 18.

49-3-208. Public accommodations laws. No state or local governmental agency may permit any violation of the public accommodations provisions of 49-2-304.

History: En. 64-322 by Sec. 7, Ch. 487, L. 1975; R.C.M. 1947, 64-322; amd. Sec. 19, Ch. 177, L. 1979.

49-3-209. Retaliation prohibited. It is an unlawful discriminatory practice for a state or local governmental agency to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this chapter or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this chapter.

History: En. Sec. 3, Ch. 540, L. 1983.

Part 3

Enforcement and Remedies

49-3-301. Cooperation with commission for human rights. All state and local governmental agencies shall cooperate with the commission for human rights in the commission's enforcement and educational programs. They shall comply with the commission's requests for information concerning practices inconsistent with the state policy against discrimination and shall consider its recommendations for effectuating and implementing that policy. The commission shall continue to augment its enforcement and educational programs which seek to eliminate all discrimination.

History: En. 64-325 by Sec. 10, Ch. 487, L. 1975; R.C.M. 1947, 64-325; amd. Sec. 20, Ch. 177, L. 1979.

49-3-302. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. 64-326 by Sec. 11, Ch. 487, L. 1975; R.C.M. 1947, 64-326; amd. Sec. 21, Ch. 177, L. 1979.

49-3-303. Repealed. Sec. 14, Ch. 540, L. 1983.

History: En. 64-329 by Sec. 14, Ch. 487, L. 1975; R.C.M. 1947, 64-329; amd. Sec. 1, Ch. 168, L. 1981.

49-3-304. Filing complaints. (1) Except as provided in subsection (2), a complaint under this chapter must be filed with the commission within 180 days after the alleged unlawful discriminatory practice occurred or was discovered.

(2) If the complainant has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may be filed within 180 days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

(3) A complaint not filed within the times set forth in this section may not be considered by the commission.

History: En. Sec. 5, Ch. 540, L. 1983; amd. Sec. 2, Ch. 415, L. 1987.

49-3-305. Form of complaint. A complaint filed with the commission must be in the form of a written, verified complaint, stating the name and address of the state or local governmental agency alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

History: En. Sec. 6, Ch. 540, L. 1983.

49-3-306. Temporary relief by court order. At any time after a complaint is filed with the commission under this chapter, a district court may, upon the application of the commission or the complainant, enter a preliminary injunction against a respondent in the case. The procedure for granting the order is as provided by statute for preliminary injunctions in civil actions.

History: En. Sec. 7, Ch. 540, L. 1983; amd. Sec. 8, Ch. 801, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning, after "chapter", substituted language authorizing District Court, upon application by Commission or complainant, to enter preliminary injunction against respondent for former language that read: "alleging an unlawful discriminatory practice, the commission may file a petition in the district court in the county in which the subject of the complaint occurred or in the county in which a respondent resides or transacts business, seeking appropriate temporary relief against this practice, including an order restraining the respondent from interfering in any manner with an order the commission may enter with respect to the complaint"; and deleted (2) that read: "(2) The court has the power to grant the temporary relief or restraining order it considers just and proper. However, no relief or order extending beyond 14 days may be granted except by consent of the respondent or upon a finding by the court that there is reasonable cause to believe that the respondent has engaged in discriminatory practices".

Cross-References

Injunctions, Title 27, ch. 19.

Temporary restraining orders, 27-19-314 through 27-19-319.

49-3-307. Informal settlement. The commission staff shall promptly and impartially investigate the matters set out in a complaint filed with the commission. If the staff determines that the allegations are supported by substantial evidence, it shall immediately try to eliminate the discriminatory practice by informal conference, conciliation, and persuasion.

History: En. Sec. 8, Ch. 540, L. 1983.

49-3-308. Contested case hearing before commission. (1) If the informal efforts to eliminate the discrimination alleged in a complaint filed with the commission are unsuccessful, the staff shall inform the commission of the failure and the commission shall serve written notice, together with a copy of the complaint, requiring the state or local governmental agency charged in the complaint to answer the allegations of the complaint at a hearing before the commission.

(2) The commission hearing must be held in the county where the unlawful conduct is alleged to have occurred unless the state or local governmental agency charged in the complaint or the commission requests a change of venue for good cause shown. The case in support of the complaint may be presented before the commission by the commission staff, the complainant, or an attorney representing the complainant. The hearing and any subsequent proceedings under this chapter must be held in accordance with the Montana Administrative Procedure Act, except as provided in 49-3-311.

(3) The commission may make provisions for defraying the expenses of an indigent party in a contested case hearing held pursuant to this chapter.

(4) The prevailing party in a hearing under this section may bring an action in district court for attorney fees. The court in its discretion may award the prevailing party reasonable attorney fees. Such action must comply with the Montana Rules of Civil Procedure.

History: En. Sec. 9, Ch. 540, L. 1983.

Cross-References

Contested case procedure under Montana Administrative Procedure Act, Title 2, ch. 4, parts 6 and 7.

49-3-309. Procedure upon a finding of discrimination by commission. (1) If the commission finds that a state or local governmental agency against which a complaint was filed has engaged in the discriminatory practice alleged in the complaint, the commission shall order it to refrain from engaging in the discriminatory practice. The order may:

(a) prescribe conditions for the governmental agency's future conduct relevant to the type of discriminatory practice found;

(b) require any reasonable measure to correct the discriminatory practice and to rectify any harm, pecuniary or otherwise, to the person discriminated against; and

(c) require a report on the manner of compliance.

(2) The order may not require the payment of punitive damages.

(3) If a commission order or conciliation agreement requires inspection by the commission staff for a period of time to determine if the respondent is complying with the order or agreement, the period of time may not exceed 3 years.

History: En. Sec. 10, Ch. 540, L. 1983.

49-3-310. Procedure upon failure by commission to find discrimination. If the commission finds that a state or local governmental agency against which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and serve on the complainant an order dismissing the complaint.

History: En. Sec. 11, Ch. 540, L. 1983.

49-3-311. Enforcement of commission order. If the commission's order is not obeyed, the commission staff or a party may petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by any appropriate order.

History: En. Sec. 12, Ch. 540, L. 1983; amd. Sec. 2, Ch. 539, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

Temporary restraining orders, 27-19-314 through 27-19-319.

49-3-312. Filing a complaint in district court. (1) Except as provided in subsection (2), the commission staff shall, at the request of either party, issue a letter entitling the complainant to file a discrimination action in district court if:

(a) the commission has not yet held a contested case hearing pursuant to 49-3-308; and

(b) 12 months have elapsed since the complaint was filed.

(2) The commission staff may refuse to permit removal of a case to district court if:

(a) the party requesting removal fails to comply with the terms of a lawful subpoena issued in the investigative process;

(b) the party requesting removal has waived the right to request removal to the district court;

(c) more than 30 days have elapsed since service of notice of hearing under 49-3-308, unless the commission fails to schedule a hearing to be held within 90 days of service of notice of hearing; or

(d) the party requesting removal has unsuccessfully attempted through court litigation to prevent the commission staff from investigating the complaint.

(3) The commission staff may dismiss a complaint filed under 49-3-304 and allow the complainant to file a discrimination action in district court if:

(a) the commission staff determines that the commission lacks jurisdiction over the complaint;

(b) the complainant fails to cooperate in the staff's investigation of the complaint or fails to keep the commission advised of changes of address; or

(c) the commission staff determines that the allegations of the complaint are not supported by substantial evidence.

(4) A decision of the commission staff to dismiss a complaint or to refuse to permit removal to the district court is final unless a party seeks review by filing objections within 14 days after the decision is served on him. The commission shall review the decision in informal proceedings under 2-4-604, except that 2-4-604(5) applies only to review of a refusal to permit removal.

(5) Within 90 days after receipt of a notice of dismissal under subsection (3) or an order under subsection (4) of affirmance of a dismissal, whichever occurs later, or of a letter issued under subsection (1), the complainant may petition the district court in the district in which the alleged violation occurred for appropriate relief. If the claimant fails to petition the district court within 90 days after receipt of the letter, notice, or order issued by the commission staff, the complaint shall be barred.

(6) If the district court finds, in an action under this section, that a state or local governmental agency against whom or which a complaint was filed has engaged in the unlawful discriminatory practice alleged in the complaint, the court may provide the same relief as described in 49-3-309 for a commission order. In addition, the court may in its discretion allow the prevailing party reasonable attorney fees.

(7) The provisions of this chapter establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of the discrimination provisions of Article II, section 4, of the Montana constitution or 49-1-102. No other claim or request for relief based upon such acts may be entertained by a district court other than by the procedures specified in this chapter.

History: En. Sec. 13, Ch. 540, L. 1983; amd. Sec. 2, Ch. 511, L. 1987.

Cross-References

Injunctions, Title 27, ch. 19.

CHAPTER 4

RIGHTS OF THE HANDICAPPED

Part 1 — Discrimination in Employment

49-4-101. Discrimination prohibited.
49-4-102. Penalty and civil remedy.

Part 2 — Rights of the Physically Disabled

49-4-201. Repealed.
49-4-202. Policy of the state.
49-4-203. Definition.
49-4-204 through 49-4-210 reserved.
49-4-211. Right to use public places and accommodations.
49-4-212. Access to housing accommodations.
49-4-213. Use of white or metallic-colored canes restricted to the blind.
49-4-214. Right to be accompanied by a guide or hearing dog.
49-4-215. Penalty for violating rights.
49-4-216. Duty and civil liability of pedestrian or driver approaching blind person.
49-4-217. Penalty for violation of duty or unauthorized use of cane.

Part 3 — Special Parking Permits Motorized Wheelchairs

49-4-301. Who eligible for special parking permit.
49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces.
49-4-303. Applications for permit.
49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle.
49-4-305. Expiration of permit.
49-4-306. Department of justice to publicize permit.
49-4-307. Penalty.
49-4-308 and 49-4-309 reserved.
49-4-310. Special parking permit for long-term care facility.
49-4-311. Use of motorized wheelchairs on public streets.
49-4-312. Regulation by municipalities.

Part 4 — Preference in Leasing of Concessions (Repealed. Sec. 14, Ch. 175, L. 1981)

Part 5 — Interpreters for the Deaf in Official Proceedings

49-4-501. Policy.
49-4-502. Definitions.
49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used.
49-4-504. Preliminary determination.
49-4-505. Intermediary interpreter to be used.
49-4-506. Interpreter in full view.
49-4-507. Coordination of interpreter requests.
49-4-508. Oath of interpreter.
49-4-509. Compensation.

49-4-510. Waiver.
49-4-511. Privileged communications.

Chapter Cross-References

Income tax exemption for handicapped child, 15-30-114.

Sheltered workshops — public contracts to purchase, Title 18, ch. 5, part 1.

Special education supervisor, 20-3-103.

Special education for exceptional children, Title 20, ch. 7, part 4.

Surrogate parent to represent interests of handicapped student, 20-7-461 through 20-7-463.

State School for the Deaf and Blind, Title 20, ch. 8.

Library services for the handicapped, 22-1-103.

Medical and health insurance — continuation of coverage for handicapped child, 33-22-304, 33-22-506, 33-30-1003, 33-30-1004.

Regulation of speech-language pathologists and audiologists, Title 37, ch. 15.

Exemption from barber apprenticeship fees, 37-30-307.

Exemption from cosmetology examination and fees, 37-31-308.

Exclusion from minimum wage and overtime compensation laws, 39-3-406.

Workers' compensation — vocationally handicapped, Title 39, ch. 71, part 9.

Workers' compensation — vocational rehabilitation, Title 39, ch. 71, part 10.

Mental competency of criminal defendants, Title 46, ch. 14.

Duty of state to develop services for handicapped children, 50-1-202.

Accessibility of buildings built with public funds, 50-60-201.

Child rehabilitation, 52-2-113.

Adoption of hard-to-place children, Title 52, ch. 2, part 5.

Adult services, Title 52, ch. 3.

Vocational rehabilitation, Title 53, ch. 7.

Community programs and homes for the physically disabled, Title 53, ch. 19, part 1.

Developmentally disabled, Title 53, ch. 20.

Mentally ill, Title 53, ch. 21.

No discrimination based on evaluation or treatment relating to mental illness, 53-21-189.

Ineligibility for driver's license, 61-5-105.

Advertising by public utilities of special equipment to aid handicapped, 69-3-307.

Exemption from death taxes — property transferred to certain children's hospitals, 72-16-312.

Exceptions to fishing and hunting license requirements and regulations, Title 87, ch. 2, part 8.

Part 1

Discrimination in Employment

49-4-101. Discrimination prohibited. It is unlawful to discriminate, in hiring or employment, against a person because of the physical handicap of such person. There is no discrimination where the nature or extent of the handicap reasonably precludes the performance of the particular employment or where the particular employment may subject the handicapped or his fellow employees to physical harm.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

49-4-102. Penalty and civil remedy. A person who practices discrimination in violation of 49-4-101 commits a misdemeanor and is also liable in a district court action for civil damages and attorney's fees by the person discriminated against. Should the person who allegedly practiced discrimination prevail in the civil action, he shall be entitled to recover reasonable attorney's fees from the person who alleged the discrimination.

History: En. Sec. 3, Ch. 77, L. 1974; R.C.M. 1947, 64-304(part).

Cross-References
Misdemeanor penalty, 46-18-212.

Part 2

Rights of the Physically Disabled

49-4-201. Repealed. Sec. 11, Ch. 239, L. 1983.
History: En. Sec. 1, Ch. 181, L. 1971; R.C.M. 1947, 71-1303.

49-4-202. Policy of the state. It is the policy of the state to encourage and enable the blind, the visually handicapped, the deaf, and the otherwise physically disabled to participate fully in the social and economic life of the state and to engage in remunerative employment. The blind, the visually handicapped, the deaf, and the otherwise physically disabled shall be employed in the state service, the service of the political subdivisions of the state, the public schools, and all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved.
History: En. Sec. 2, Ch. 181, L. 1971; R.C.M. 1947, 71-1304; amd. Sec. 1, Ch. 176, L. 1981.

Cross-References
Accessibility of polling places, Title 13, ch. 3, part 2.

49-4-203. Definition. "Housing accommodation" means any real property or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings but does not include any single-family residence the occupants of which furnish for compensation not more than one room therein.
History: En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(2).

49-4-204 through 49-4-210 reserved.

49-4-211. Right to use public places and accommodations. (1) The blind, the visually handicapped, and the deaf have the same right as the able-bodied to the full and free use of the streets, highways, sidewalks, walkways, public buildings, public facilities, and other public places.

(2) The blind, the visually handicapped, and the deaf are entitled to full and equal accommodations, advantages, facilities, and privileges of all common carriers, as defined in 69-11-101, and all public accommodations, as defined in 49-2-101, subject only to the conditions and limitations established by law and applicable alike to all persons.

History: **En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(2), (3); amd. Sec. 22, Ch. 177, L. 1979; amd. Sec. 2, Ch. 176, L. 1981.**

Cross-References

Pedestrian traffic laws, Title 61, ch. 8, part 5.

49-4-212. Access to housing accommodations. Blind, visually handicapped, and deaf persons are entitled to as full and equal access as other members of the general public to any housing accommodation offered for compensation in this state.

History: **En. 71-1305.1 by Sec. 5, Ch. 266, L. 1975; amd. Sec. 2, Ch. 35, L. 1977; R.C.M. 1947, 71-1305.1(1), (3); amd. Sec. 3, Ch. 176, L. 1981; amd. Sec. 10, Ch. 801, L. 1991.**

Compiler's Comments

1991 Amendment: Deleted (2) that read: "(2) Nothing in this section requires a person renting, leasing, or providing real property for compensation to modify his property in any way or provide a higher degree of care for a blind, visually handicapped, or deaf person than for a person who is not so disabled".

Cross-References

Procedures and remedies for enforcement of housing discrimination laws, 49-2-510.

Intimidation or interference in right to be free from housing discrimination — penalties, 49-2-602.

49-4-213. Use of white or metallic-colored canes restricted to the blind. No person, except those wholly or partially blind, shall carry or use on any street or highway or in any other public place a cane or walking stick which is white or metallic in color or white or metallic tipped with red.

History: **En. Sec. 3, Ch. 181, L. 1971; amd. Sec. 1, Ch. 266, L. 1975; R.C.M. 1947, 71-1305(1).**

49-4-214. Right to be accompanied by a guide or hearing dog. (1) Every totally or partially blind or deaf person has the right to be accompanied by a guide or hearing dog, especially trained for the purpose, in any of the places mentioned in 49-4-211(2) without being charged extra for the guide or hearing dog. He is liable for any damage done to the premises or facilities by such dog.

(2) Every totally or partially blind or deaf person who has a guide or hearing dog or who obtains a guide or hearing dog is entitled to full and equal access to all housing accommodations as provided in 49-2-305 and 49-4-212. He may not be required to pay extra compensation for the guide or hearing dog but is liable for any damage done to the premises by the guide or hearing dog.

History: **En. Sec. 4, Ch. 181, L. 1971; amd. Sec. 2, Ch. 266, L. 1975; R.C.M. 1947, 71-1306; amd. Sec. 23, Ch. 177, L. 1979; amd. Sec. 4, Ch. 176, L. 1981.**

49-4-215. Penalty for violating rights. Any person, firm, or corporation or the agent of any person, firm, or corporation who denies or interferes with admittance to or enjoyment of the public facilities enumerated in 49-4-211 or otherwise interferes with the rights of a totally or partially blind, deaf, or otherwise disabled person under 49-4-211 is guilty of a misdemeanor.

History: **En. Sec. 4, Ch. 266, L. 1975; R.C.M. 1947, 71-1309; amd. Sec. 5, Ch. 176, L. 1981.**

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

Misdemeanor penalty, 46-18-212.

49-4-216. Duty and civil liability of pedestrian or driver approaching blind person. (1) A pedestrian who is not totally or partially blind or a driver of a vehicle who approaches or comes in contact with a person who is totally or partially blind and is carrying a cane or walking stick predominately white or metallic in color or white tipped with red or is being led by a trained guide dog wearing a harness and walking on either side of or slightly in front of such blind person shall immediately come to a full stop and take such precautions before proceeding as may be necessary to avoid accident or injury to such blind person.

(2) A driver or pedestrian who fails to take such precautions is liable in damages for any injury caused the totally or partially blind person. A totally or partially blind pedestrian who is not carrying such a cane or using a guide dog in any of the places listed in 49-4-211 has all of the rights and privileges conferred by law upon other persons, and the failure of such a pedestrian to carry such a cane or to use a guide dog in any such place may not be held to constitute or be evidence of contributory negligence.

History: En. Sec. 5, Ch. 181, L. 1971; amd. Sec. 3, Ch. 266, L. 1975; R.C.M. 1947, 71-1307; amd. Sec. 24, Ch. 177, L. 1979.

Cross-References

Liability, Title 27, ch. 1, part 7.

Pedestrian traffic laws, Title 61, ch. 8, part 5.

49-4-217. Penalty for violation of duty or unauthorized use of cane. Any person other than a person wholly or partially blind who shall carry a cane or walking stick such as is described in this part, contrary to the provisions of this part, or who shall fail to heed the approach of a person carrying such a cane as is described by this part or who shall fail to come to a full stop when approaching or coming in contact with a person so carrying such a cane or walking stick or being led by a trained guide dog or who shall fail to take precaution against accidents or injury to such person after coming to a stop, as provided for herein, is guilty of a misdemeanor punishable by a fine not to exceed $25.

History: En. Sec. 6, Ch. 181, L. 1971; R.C.M. 1947, 71-1308.

Part 3

Special Parking Permits
Motorized Wheelchairs

49-4-301. Who eligible for special parking permit. (1) The department of justice shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap that impairs his mobility when not in a motor vehicle;

(b) regardless of whether he holds a driver's license or owns a motor vehicle, has a permanent physical handicap that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination; or

(c) has a temporary physical handicap that impairs his driving ability or his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination.

(2) No one applicant may receive more than one permit.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(1), (6); amd. Sec. 1, Ch. 614, L. 1983.

49-4-302. Privileges of permitholder — privilege for disabled veteran — exemptions from time limits — requirements for special parking spaces. (1) The parking permit issued under this part, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons whether on public property or on private property available for public use.

(2) No vehicle other than one lawfully displaying a parking permit issued under this part or one displaying a distinguishing handicapped person's license plate or placard issued by a foreign jurisdiction conferring the same parking privileges as conferred in subsection (1) and conveying a handicapped person or one displaying a specially inscribed license plate issued under 61-3-332(10)(c) and conveying a 100% disabled veteran may be parked in a parking space on public or private property that is clearly identified by an official sign as being reserved for use by handicapped persons.

(3) The governing body of a city, town, or county may exempt vehicles lawfully displaying parking permits issued under this part and vehicles lawfully displaying specially inscribed license plates issued under 61-3-332(10)(c) and parked in public places along public streets from any time limitation imposed upon parking in such area except in areas where:

(a) stopping, standing, or parking of all vehicles is prohibited;

(b) only special vehicles may be parked; or

(c) parking is not allowed during specific periods of the day in order to accommodate heavy traffic.

(4) In accordance with subsection (2), the governing body of a city, town, or county or appropriate state agency may impose all, but not less than all, of the following requirements with respect to any special parking space constructed after September 30, 1985, and reserved for handicapped persons or permitholders on ways of this state open to the public as defined in 61-8-101:

(a) The space must be located on a smooth, level surface as near as practicable to building entrances or walkways that have curb cuts and appropriately designed ramps and access lanes to accommodate wheelchairs.

(b) If parallel to curbside, the parking space must be separated from an adjacent space, either in the front or the rear, by at least 5 feet of striped no-parking area.

(c) If at an angle to curbside, the parking space must be at least 8 feet wide and free of obstruction if located at the end of a line of angle parking spaces, and each other angle parking space designated for handicapped persons must be at least 13 feet wide.

(d) A parking space reserved for handicapped persons must be designated by a sign showing the international symbol of accessibility and indicating that a permit is required. The sign must be attached to a wall or post in such a way that it is not obscured by a vehicle parked in the space.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(2); amd. Sec. 2, Ch. 614, L. 1983; amd. Sec. 2, Ch. 71, L. 1985; amd. Sec. 1, Ch. 203, L. 1985; amd. Sec. 1, Ch. 616, L. 1985; amd. Sec. 1, Ch. 187, L. 1987; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendment: In (2) and (3) substituted "61-3-332(10)(c)" for "61-3-451".

Cross-References

Stopping, standing, and parking laws, 61-8-353 through 61-8-357.

49-4-303. Applications for permit. (1) Applications for a special parking permit may be made to the department of justice on forms provided by the department, which must require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician describing the extent of the applicant's disability; and

(b) a fee of $1.

(2) Applications shall be available at the office of the county treasurer in each county and directly from the department.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(4), (5).

49-4-304. Special license plate or card to be provided and displayed — additional cards allowed for owners of more than one vehicle. (1) The department of justice shall provide a special license plate under 61-3-332(10)(f) or a card to be displayed on or in a motor vehicle to indicate a parking privilege granted under this part. The special license plate must be affixed to the vehicle according to 61-3-301, or the card must be prominently displayed in the windshield of a vehicle when the parking privilege is being used by the handicapped person in a vehicle other than the one to which his special license plate is affixed.

(2) Subject to the provisions of 49-4-301 through 49-4-305, a person who is eligible to receive a special parking permit and who owns more than one motor vehicle may request and the department of justice shall provide to him additional cards described in subsection (1) to equal the number of motor vehicles, other than commercial vehicles, owned by the person.

(3) Upon application under 49-4-303, a handicapped person who does not hold a driver's license or does not own a vehicle may receive a card described in subsection (1) to be displayed in a vehicle in which the handicapped person is being conveyed when the parking privilege is being used.

(4) The card must bear a representation of a wheelchair as the symbol of a handicapped person.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(3); amd. Sec. 3, Ch. 614, L. 1983; amd. Sec. 4, Ch. 159, L. 1985; amd. Sec. 1, Ch. 456, L. 1991; amd. Sec. 17, Ch. 724, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 456 inserted (2) requiring Department to issue additional parking privilege display cards to eligible handicapped person who owns more than one vehicle.

Chapter 724 in (1) substituted "61-3-332(10)(f)" for "61-3-445".

49-4-305. Expiration of permit. A permit expires on:

(1) the death of the permittee; or

(2) certification by a physician that the permittee's physical handicap impairing his mobility no longer exists.

History: En. 53-106.12 by Sec. 1, Ch. 31, L. 1977; R.C.M. 1947, 53-106.12(7); amd. Sec. 4, Ch. 614, L. 1983.

49-4-306. Department of justice to publicize permit. (1) The department of justice shall publicize the provisions of 49-4-301 through 49-4-305 in a manner designed to inform those eligible for a special parking permit.

(2) The department of justice shall budget sufficient funds to accomplish the requirements of subsection (1).

History: En. Sec. 1, Ch. 32, L. 1981.

49-4-307. Penalty. A person who parks a motor vehicle in violation of 49-4-302(2) is guilty of a misdemeanor and is punishable by a fine of $50. However, no person charged with violating 49-4-302(2) may be convicted if within 24 hours he produces in court or the office of the arresting officer a special parking permit previously issued to him and valid at the time of his arrest.

History: En. Sec. 6, Ch. 614, L. 1983; amd. Sec. 2, Ch. 187, L. 1987.

49-4-308 and 49-4-309 reserved.

49-4-310. Special parking permit for long-term care facility. A long-term care facility, as defined in 37-9-101, may apply for a permit issued for special parking spaces under 49-4-302. If granted, the permit entitles the facility to the privileges granted in 49-4-302.

History: En. Sec. 3, Ch. 187, L. 1987.

49-4-311. Use of motorized wheelchairs on public streets. A person who by reason of physical disability is unable to move about as a pedestrian may operate a self-propelled wheelchair or similar vehicle during daylight hours on the streets of a city or town. When operated on public streets, such vehicles must display the slow moving equipment emblem required in 61-9-415(2) or be equipped with a windwhip displaying a red flag.

History: En. 11-911.1 by Sec. 2, Ch. 369, L. 1974; R.C.M. 1947, 11-911.1.

49-4-312. Regulation by municipalities. Use of self-propelled wheelchairs and similar vehicles may be regulated by cities and towns.

History: En. 11-911.2 by Sec. 3, Ch. 369, L. 1974; R.C.M. 1947, 11-911.2.

Part 4

Preference in Leasing of Concessions (Repealed. Sec. 14, Ch. 175, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

49-4-401. En. Sec. 2, Ch. 66, L. 1951; R.C.M. 1947, 71-1302; amd. Sec. 1, Ch. 474, L. 1979.

49-4-402. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-403. En. Sec. 1, Ch. 66, L. 1951; R.C.M. 1947, 71-1301(part).

49-4-404. En. Sec. 2, Ch. 474, L. 1979.

49-4-405. En. Sec. 3, Ch. 474, L. 1979.

49-4-406. En. Sec. 4, Ch. 474, L. 1979.

Part 5

Interpreters for the Deaf in Official Proceedings

Part Cross-References

State School for the Deaf and Blind, Title 20, ch. 8.

Regulation of speech-language pathologists and audiologists, Title 37, ch. 15.

Workers' compensation for occupational deafness, Title 39, ch. 71, part 8.

49-4-501. Policy. It is the policy of this state to secure the constitutional rights of deaf persons who, because of impairment of hearing or speech, are unable to readily understand or communicate spoken language and who consequently cannot be fully protected in legal proceedings unless qualified interpreters are available to assist them.

History: En. Sec. 1, Ch. 245, L. 1979.

Cross-References

Courts open to all persons for full legal redress, Art. II, sec. 16, Mont. Const.

Rights of accused, Art. II, sec. 24, Mont. Const.

49-4-502. Definitions. As used in this part, the following definitions apply:

(1) "Appointing authority" means the presiding judge or justice of any court, the chairman of any board, commission, or authority, the director or commissioner of any department or agency, or any other person presiding at any hearing or other proceeding in which a qualified interpreter is required pursuant to this part.

(2) "Deaf person" means a person whose hearing is totally impaired or whose hearing is so seriously impaired as to prohibit the person from understanding oral communications. The term further includes, but is not limited to, a person who, because of loss of hearing, cannot communicate spoken language.

(3) "Principal party in interest" means a person who is a named party in any proceeding or who will be directly affected by the decision or action which may be made or taken.

(4) "Qualified interpreter" means an interpreter listed by the department of social and rehabilitation services as provided in 49-4-507.

(5) "Intermediary interpreter" means a knowledgeable deaf person who, because of his intimate acquaintance with deaf persons who use mainly natural gestures for communicating, can be used as an intermediary between the deaf person and a qualified interpreter.

History: En. Sec. 2, Ch. 245, L. 1979.

49-4-503. Deaf person as participant in judicial or administrative proceeding — interpreter to be used. A qualified interpreter shall be appointed as follows:

(1) In any case before any court or a grand jury in which a deaf person is a party, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter to interpret the proceedings to the deaf person and interpret his testimony or statements and to assist in preparation with counsel.

(2) At all stages in any proceeding of a judicial or quasi-judicial nature before any agency of the state or governing body or agency of a local government in which a deaf person is a principal party in interest, either as a complainant, defendant, witness, or supplicant, the agency or governing body shall appoint a qualified interpreter to interpret the proceedings to the deaf person and to interpret his testimony or statements.

(3) (a) In any proceedings in which a deaf person may be subjected to confinement or criminal sanction or in any proceeding preliminary thereto, including a coroner's inquest, grand jury proceedings, and proceedings relating to mental health commitments, the presiding judicial officer shall appoint a qualified interpreter to assist the deaf person throughout the proceedings.

(b) Upon arresting a deaf person for an alleged violation of a criminal law and prior to interrogating or taking a statement of the deaf person, the arresting law enforcement official shall make available to the person, at the earliest possible time, a qualified interpreter to assist the person throughout such interrogation or taking of a statement.

(c) No statement, written or oral, made by a person who is deaf in reply to a question of a law enforcement officer or any other person having a prosecutorial function in any criminal or quasi-criminal proceeding may be used against that deaf person unless either the statement was made or elicited through a qualified interpreter and was made knowingly, voluntarily, and intelligently or, in the case of waiver, the court makes a special finding that any statement made by the deaf person was made knowingly, voluntarily, and intelligently.

(d) This subsection (3) does not apply to apprehensions, arrests, or statements involving a violation of the traffic laws of Montana.

History: En. Sec. 3, Ch. 245, L. 1979.

Cross-References

Commitment of the developmentally disabled, Title 53, ch. 20, part 1.

Commitment of the seriously mentally ill, Title 53, ch. 21, part 1.

49-4-504. Preliminary determination. The appointing authority may not appoint a qualified interpreter in any case until he makes a preliminary determination that the qualified interpreter is able to accurately communicate with and translate information to and from the deaf person in the case.

History: En. Sec. 4, Ch. 245, L. 1979.

49-4-505. Intermediary interpreter to be used. If a qualified interpreter states that he is unable to render a satisfactory interpretation and that an intermediary interpreter will improve the quality of interpretation, the appointing authority shall appoint an intermediary interpreter to assist the qualified interpreter subject to the same provisions that govern a qualified interpreter under this part.

History: En. Sec. 5, Ch. 245, L. 1979.

49-4-506. Interpreter in full view. In any action or proceeding in which an interpreter is required to be appointed, the court or administrative authority may not commence proceedings until the appointed interpreter is in full view of and spatially situated to assure proper communication with the deaf person or persons involved as participants.

History: En. Sec. 6, Ch. 245, L. 1979.

49-4-507. Coordination of interpreter requests. (1) Whenever an appointing authority is required to appoint an interpreter, the authority shall request the department of social and rehabilitation services to furnish the authority with a list of qualified interpreters. If the choice of qualified interpreters does not meet the needs or wishes of the deaf person, the appointing authority shall appoint another qualified interpreter.

(2) The Montana association of the deaf and the Montana registry of interpreters for the deaf shall provide the department of social and rehabilitation services with a list of qualified and available interpreters.

(3) The only function of the department of social and rehabilitation services is to maintain the list referred to in subsection (2).

History: En. Sec. 7, Ch. 245, L. 1979.

49-4-508. Oath of interpreter. Every interpreter appointed to interpret for a deaf person, before entering upon his duties, shall take an oath that he will make a true interpretation in an understandable manner to the person for whom he is appointed and that he will repeat the statements of such person in the English language to the best of his skill and judgment.

History: En. Sec. 8, Ch. 245, L. 1979.

49-4-509. Compensation. An interpreter appointed to interpret for the deaf is entitled to receive a reasonable fee for his services, together with his actual expenses for travel and transportation. The appointing authority shall set the fee. When the interpreter is appointed in a criminal proceeding, the fee shall be paid out of the county general fund; and when the interpreter is otherwise appointed, the fees shall be paid out of funds available to the appointing authority.

History: En. Sec. 9, Ch. 245, L. 1979.

49-4-510. Waiver. The right of a deaf person to an interpreter may not be waived except by a deaf person who requests a waiver in writing. Such waiver is subject to the approval of counsel to the deaf person, if existent, and is subject to the approval of the appointing authority.

History: En. Sec. 10, Ch. 245, L. 1979.

49-4-511. Privileged communications. Any information that the interpreter gathers from the deaf person pertaining to any proceeding then pending shall at all times remain confidential and privileged, on an equal basis with the attorney-client privilege, unless such deaf person desires that such information be communicated to other persons.

History: En. Sec. 11, Ch. 245, L. 1979.

Cross-References

Attorney-client privilege, 26-1-803.

TITLE 50

HEALTH AND SAFETY

Ch.
1. Department and Board of Health and Environmental Sciences.
2. Local Boards of Health.
3. State Fire Prevention and Investigation Program.
Chapter 4 reserved.
5. Hospitals and Related Facilities.
6. Emergency Medical Services.
7. Home Health Agencies. Repealed. Sec. 27, Ch. 347, L. 1979.
8. One-Step Facility Licensing.
9. Rights of the Terminally Ill Act.
10. Do Not Resuscitate — Notification.
Chapters 11 through 14 reserved.
15. Vital Statistics.
16. Health Care Information.
17. Tuberculosis Control.
18. Sexually Transmitted Diseases.
19. Pregnant Women and Newborn Infants.
20. Abortion.
21. Cadavers and Autopsies.
22. Determination of Death.
23. Rabies Control.
Chapters 24 through 29 reserved.
30. Consumer Product Safety Act.
31. Montana Food, Drug, and Cosmetic Act.
32. Controlled Substances.
33. Blood and Blood Products.
34. Flour and Bread.
35. Imported Meats. Repealed. Sec. 1, Ch. 136, L. 1981.
36. Mattresses — Shoddy Control.
37. Fireworks.
38. Explosives. Repealed. Sec. 3, Ch. 187, L. 1985.
39. Fire Protection Equipment.
40. Smoking in Public Places.
41. Laetrile.
42. Dimethyl Sulfoxide (DMSO).
43. Calcium-EAP, Harnosal, and Phosetamin.
44. Treatment of Chronic Renal Disease.
Chapters 45 through 48 reserved.
49. Food and Nutrition.
50. Food Establishments.
51. Hotels, Motels, and Roominghouses.
52. Tourist Campgrounds and Trailer Courts.
53. Public Swimming Pools and Swimming Areas.
Chapters 54 through 59 reserved.
60. Building Construction Standards.
61. Fire Safety in Public Buildings.
62. Fire Hazards.
63. Investigation of Fires.
64. Asbestos Regulation in Building Construction and Demolition.
Chapters 65 through 69 reserved.
70. Occupational Health.
71. Occupational Safety.
72. Safety in Mines Other Than Coal Mines.

73. Safety in Coal Mines.
74. Boilers and Steam Engines.
75. Consolidation of Boiler, Mine, and Coal Mine Inspectors. Repealed. Sec. 10, Ch. 21, L. 1981.
76. Hoisting Engines.
77. Construction Site Health and Safety.
78. Employee and Community Hazardous Chemical Information Act.

CHAPTER 1

DEPARTMENT AND BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES

Part 1 — General Provisions

50-1-101. Definitions.
50-1-102. Legal adviser to board and department.
50-1-103. Enforcement of public health laws.
50-1-104. General penalty.

Part 2 — Department

50-1-201. Administration of state health plan.
50-1-202. General powers and duties.
50-1-203. Sanitary inspections.
50-1-204. Quarantine measures.
50-1-205. Repealed.
50-1-206. Regulation of schools in matters of health.

Part 3 — Board

50-1-301. Duties of board.
50-1-302. Board meetings.

Part 1

General Provisions

50-1-101. Definitions. Unless the context indicates otherwise, in this chapter, the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Communicable disease" means a disease designated communicable by the department.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

History: **En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; R.C.M. 1947, 69-4102.**

Cross-References

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-1-102. Legal adviser to board and department. The attorney general is legal adviser to the board and department. If the county attorney fails to act and with the approval of the attorney general, the department may retain special counsel and compensate him from appropriations to the department.

History: **En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part).**

Cross-References

Duties of Attorney General, 2-15-501.

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716.

50-1-103. Enforcement of public health laws. (1) Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the board or the department, the department may, through the attorney general or appropriate county attorney, sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the board or department.

History: **En. Sec. 11, Ch. 197, L. 1967; amd. Sec. 32, Ch. 349, L. 1974; amd. Sec. 2, Ch. 288, L. 1977; R.C.M. 1947, 69-4111(part).**

Cross-References

Prosecutorial duties of County Attorney, 7-4-2712.

Duties of County Attorney relating to state matters, 7-4-2716. Injunctions, Rule 65, M.R.Civ. P. (see Title 25, ch. 20); Title 27, ch. 19.

50-1-104. General penalty. Anyone who violates a rule adopted by the board or the department for which no penalty is specified is guilty of a misdemeanor.

History: **En. Sec. 221, Ch. 197, L. 1967; amd. Sec. 82, Ch. 349, L. 1974; R.C.M. 1947, 69-5701.**

Cross-References

Penalty when none specified, 46-18-212.

Part 2

Department

50-1-201. Administration of state health plan. The department is hereby established as the sole and official state agency to administer the state program for comprehensive health planning and is hereby authorized to prepare a plan for comprehensive state health planning. The department is authorized to confer and cooperate with any and all other persons, organizations, or governmental agencies that have an interest in public health problems and needs. The department, while acting in this capacity as the sole and official state agency to administer and supervise the administration of the official comprehensive state health plan, is designated and authorized as the sole and official state agency to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, bequeathed, or appropriated to it for the preparation and administration and the supervision of the preparation and administration of the comprehensive state health plan.

History: En. 69-4110.1 by Sec. 1, Ch. 184, L. 1969; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4110.1.

Cross-References

Adult foster family care homes, Title 52, ch. 3, part 3.

Medical aid, hospitalization, institutionalization of the indigent, 53-3-206, 53-3-209, 53-3-310, 53-3-313.

Medical assistance, medicaid, renal disease treatment, Montana State Hospital, Title 53, ch. 6.

Treatment, community-based services, community homes, protective services, state-owned facilities for the developmentally disabled, Title 53, ch. 20.

Community mental health centers, Montana State Hospital, community-based nursing homes, Center for the Aged, Title 53, ch. 21.

50-1-202. General powers and duties. The department shall:

(1) study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) at the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) after each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of corrections and human services or commissioner of higher education and include recommendations for improvement in conditions if necessary;

(6) advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) organize laboratory services and provide equipment and personnel for those services;

(8) develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) develop, adopt, and administer rules setting standards for participation in and operation of programs to protect the health of mothers and children, which rules may include programs for nutrition, family planning

services, improved pregnancy outcome, and those authorized by Title X of the federal Public Health Service Act and Title V of the federal Social Security Act;

(10) conduct health education programs;

(11) provide consultation to school and local community health nurses in the performance of their duties;

(12) consult with the superintendent of public instruction on health measures for schools;

(13) develop, adopt, and administer rules setting standards for a program to provide services to handicapped children, including standards for:

(a) diagnosis;

(b) medical, surgical, and corrective treatment;

(c) after-care and related services; and

(d) eligibility;

(14) provide consultation to local boards of health;

(15) bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) accept and expend federal funds available for public health services;

(17) have the power to use personnel of local departments of health to assist in the administration of laws relating to public health;

(18) after consultation with the board, adopt rules imposing fees for the tests and services performed by the laboratory of the department. Fees, established on an annual basis, should reflect the actual costs of the tests or services provided. The department may not establish fees exceeding the costs incurred in performing tests and services. All fees shall be deposited in the state special revenue fund for the use of the department in performing tests and services.

(19) adopt and enforce rules regarding the definition of communicable diseases and the reporting and control of communicable diseases; and

(20) adopt and enforce rules regarding the transportation of dead human bodies.

History: En. Sec. 10, Ch. 197, L. 1967; amd. Sec. 31, Ch. 349, L. 1974; amd. Sec. 1, Ch. 288, L. 1977; R.C.M. 1947, 69-4110; amd. Sec. 7, Ch. 200, L. 1979; amd. Sec. 1, Ch. 219, L. 1979; amd. Sec. 1, Ch. 230, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 660, L. 1983; amd. Sec. 1, Ch. 197, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment Instructions to Code Commissioner: The Code Commissioner changed "director of institutions" to "director of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fund structure, Title 17, ch. 2.

Montana University System, Title 20, ch. 25.

Policy to protect children from abuse, 41-3-101.

Local Boards of Health, Title 50, ch. 2, part 1.

One-step licensing — inspection by other department, Title 50, ch. 8.

Department to control tuberculosis, 50-17-103.

General administration of Department of Corrections and Human Services, Title 53, ch. 1, part 2.

50-1-203. Sanitary inspections. (1) The department shall make sanitary inspections of schoolhouses, churches, theaters, jails, and other buildings or facilities where persons assemble. If the facility is found unsanitary, the department shall direct that conditions be corrected within a reasonable time. If the unsanitary conditions are not corrected within the time specified, the building or facility is a public nuisance.

(2) Either the department or a local board of health shall bring an action to correct the unsanitary conditions in the way provided by law for abating a public nuisance.

History: En. Sec. 18, Ch. 197, L. 1967; amd. Sec. 1, Ch. 336, L. 1971; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4118.

Cross-References

Nuisances, Title 27, ch. 30.

50-1-204. Quarantine measures. The department may adopt and enforce quarantine measures against a state, county, or municipality to prevent the spread of communicable disease. A person who does not comply with quarantine measures shall, on conviction, be fined not less than $10 or more than $100. Receipts from fines, except justice's court fines, shall be deposited in the state general fund.

History: En. Sec. 12, Ch. 197, L. 1967; amd. Sec. 33, Ch. 349, L. 1974; R.C.M. 1947, 69-4112; amd. Sec. 33, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Municipal power to establish detention hospital to prevent spread of disease, 7-34-4101.

Fund structure, Title 17, ch. 2.

50-1-205. Repealed. Sec. 2, Ch. 219, L. 1979.

History: En. Sec. 92, Ch. 197, L. 1967; R.C.M. 1947, 69-4515.

50-1-206. Regulation of schools in matters of health. (1) The department shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical well-being of the pupils, teachers, and others who frequent schools.

(2) The department shall furnish to the districts copies of such regulations.

History: En. 75-8207 by Sec. 479, Ch. 5, L. 1971; amd. Sec. 12, Ch. 504, L. 1977; R.C.M. 1947, 75-8207.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Compliance with local health regulations required of nonpublic schools, 20-5-109.

School children to be immunized against communicable diseases, Title 20, ch. 5, part 4.

Trustees of community college district to comply with health provisions, 20-15-404.

Certification required for day-care center licensing, 52-2-722.

Part 3

Board

50-1-301. Duties of board. The board shall:

(1) advise the department in public health matters;

(2) hold hearings, administer oaths, subpoena witnesses, and take testimony in matters relating to the duties of the board.

History: En. Sec. 6, Ch. 197, L. 1967; amd. Sec. 28, Ch. 93, L. 1969; amd. Sec. 30, Ch. 349, L. 1974; R.C.M. 1947, 69-4106.

Cross-References

Board of Health and Environmental Sciences created, 2-15-2104.

50-1-302. Board meetings. (1) The board may adopt bylaws governing meetings.

(2) The director of health and environmental sciences shall serve as secretary to the board.

(3) The board shall meet once every two months and may hold additional meetings on the call of the chair, at the request of the director of health and environmental sciences, or at the request of a majority of the members.

(4) If a member has three unexcused absences from meetings in a calendar year, his position is vacant and the governor shall appoint a person to replace him.

(5) In suits or proceedings in which board actions are the subject of inquiry, meetings shall be considered to have been called and held unless the contrary is proven.

History: En. Sec. 4, Ch. 197, L. 1967; amd. Sec. 29, Ch. 349, L. 1974; R.C.M. 1947, 69-4104.

CHAPTER 2

LOCAL BOARDS OF HEALTH

Part 1 — General Provisions

50-2-101. Definitions.
50-2-102. Repealed.
50-2-103. Federal funds.
50-2-104. County boards of health.
50-2-105. City boards of health.
50-2-106. City-county boards of health.
50-2-107. District boards of health.
50-2-108. Financing of local boards — inspection fund.
50-2-109. County board appropriations.
50-2-110. City board appropriations.

50-2-111. City-county board appropriations.
50-2-112. District board appropriations.
50-2-113. Contributions by school boards and other agencies authorized.
50-2-114. Special mill levy.
50-2-115. Legal adviser to local boards.
50-2-116. Powers and duties of local boards.
50-2-117. Appointment of local health officer by department when not made by local health board.
50-2-118. Powers and duties of local health officers.
50-2-119. Nursing services.
50-2-120. Assistance from law enforcement officials.
50-2-121. Removal of diseased prisoner from jail by local health officer.
50-2-122. Obstructing local health officer in the performance of his duties unlawful.
50-2-123. Compliance order authorized.
50-2-124. Penalties for violations.

Part 1

General Provisions

50-2-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Communicable disease" means a disease designated communicable by the department.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a county, city, city-county, or district board of health.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(5) "Physician" means a physician legally authorized to practice medicine in this state.

History: **(1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (3) thru (5)En. Sec. 78, Ch. 197, L. 1967; Sec. 69-4501, R.C.M. 1947; R.C.M. 1947, 69-4102(2), (3), 69-4501.**

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Municipal Board of Health, 7-31-4101.

Licensing of physicians, Title 37, ch. 3.

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-2-102. Repealed. Sec. 9, Ch. 200, L. 1979.

History: En. Sec. 79, Ch. 197, L. 1967; amd. Sec. 54, Ch. 349, L. 1974; R.C.M. 1947, 69-4502.

50-2-103. Federal funds. The department may accept funds for public health from an agency of the federal government or from any other agency or person and allocate funds to local boards.

History: En. Sec. 80, Ch. 197, L. 1967; amd. Sec. 55, Ch. 349, L. 1974; R.C.M. 1947, 69-4503.

50-2-104. County boards of health. (1) There is a county board of health in each county consisting of:

(a) the county commissioners and two members who are appointed by the county commissioners and serve at their pleasure; or

(b) five persons who are appointed by the county commissioners and serve at their pleasure.

(2) Terms of appointed members shall be staggered and be for 3 years each.

(3) The county commissioners shall establish the staggered order of terms and all rules necessary to establish and maintain the board.

History: En. Sec. 81, Ch. 197, L. 1967; amd. Sec. 1, Ch. 216, L. 1969; amd. Sec. 20, Ch. 187, L. 1977; R.C.M. 1947, 69-4504.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Department to pay Health Board for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-105. City boards of health. (1) There is a city board of health in each first- and second-class city consisting of five persons who are appointed by the governing body of the city and serve at its pleasure.

(2) Terms of appointed members shall be staggered and shall be for 3 years each.

(3) The governing body of the city shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 82, Ch. 197, L. 1967; amd. Sec. 2, Ch. 216, L. 1969; R.C.M. 1947, 69-4505.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Power to establish municipal Board of Health and to prescribe its powers and duties, 7-31-4101.

50-2-106. City-county boards of health. (1) By mutual agreement between the county commissioners and the governing body of the city, the county and a first- or second-class city or cities may form a city-county board of health.

(2) A city-county board of health consists of:

(a) one person appointed by the county commissioners who serves at their pleasure;

(b) one person appointed by the governing body of each city that participates in the city-county board who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners and governing body or bodies of the city or cities participating in the city-county board as mutually agreed upon who serve at the pleasure of the appointing commissioners or governing body.

(3) The board shall be composed of at least five persons. Terms of appointed members shall be staggered and shall be for 3 years each.

(4) By mutual agreement between the county commissioners and the governing body of the city, they shall establish the staggered order of terms and all regulations necessary to establish and maintain the board.

History: En. Sec. 83, Ch. 197, L. 1967; amd. Sec. 3, Ch. 216, L. 1969; R.C.M. 1947, 69-4506.

Cross-References

County Board of Health in city-county consolidation, 7-3-1347.

Municipal Board of Health, 7-31-4101.

Department to pay Health Board for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-107. District boards of health. (1) By mutual agreement, two or more adjacent counties may unite to create a district board of health. First- and second-class cities located in those counties may elect to be included in the district.

(2) A district board of health consists of:

(a) one person appointed by the county commissioners of each county in the district who serves at the pleasure of the appointing commissioners;

(b) one person appointed by the governing body of each city that elects to be included in the district who serves at the pleasure of the appointing governing body;

(c) additional members appointed by the county commissioners of each county that participates in the district board as mutually agreed upon who serve at the pleasure of the appointing commissioners.

History: En. Sec. 84, Ch. 197, L. 1967; R.C.M. 1947, 69-4507.

Cross-References

Department to pay Health Board for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-108. Financing of local boards — inspection fund. (1) Local boards are financed by general fund appropriations, special levy appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

(2) There is within the state special revenue fund a local board inspection fund account.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(1); (2)En. Sec. 4, Ch. 336, L. 1983; amd. Sec. 48, Ch. 281, L. 1983.

Cross-References

Fund structure, Title 17, ch. 2.

Source of account, 50-50-205, 50-51-204, 50-52-202.

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

Use of inspection fund account, 50-50-305, 50-51-303, 50-52-302.

50-2-109. County board appropriations. County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(a).

Cross-References

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-110. City board appropriations. City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(b).

Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-111. City-county board appropriations. If a city-county board is created, it is financed by one of the following methods:

(1) (a) The county commissioners and governing body of each participating city may mutually agree upon the division of expenses.

(b) The county's part of the total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23.

(c) Each participating city's part of the total expenses is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money shall be deposited with the county treasurer who shall disburse them as county funds.

(2) (a) In first- and second-class counties, the county commissioners and governing body of each participating city may mutually agree upon the division of the expenses.

(b) The county's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property outside the incorporated limits of each participating city after approval of a budget in the way provided for other county offices and departments under Title 7, chapter 6, part 23. If the 5-mill levy is not sufficient to fund the county's share, the county commissioners may supplement it with an appropriation from the county general fund.

(c) Each participating city's part of the total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under Title 7, chapter 6, part 42.

(d) All money shall be deposited with the county treasurer who shall disburse them as county funds.

(e) The special levies authorized by this subsection are in addition to all other levies authorized by law.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(c).

Cross-References

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-112. District board appropriations. (1) District boards are financed by appropriations from the general funds of each county in the district in proportion to the population in each county.

(2) First- and second-class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under 50-2-111.

(3) All funds shall be deposited with the county treasurer of one of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(2)(d).

Cross-References

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-113. Contributions by school boards and other agencies authorized. School boards and other official and nonofficial agencies may contribute funds to a local board.

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(3).

Cross-References

School district trustees, Art. X, sec. 8, Mont. Const.; Title 20, ch. 3, part 3.

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-114. Special mill levy. If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than 1 mill may be made on the taxable valuation of all property in the city or county in addition to all other levies authorized by law. This section does not apply when the board has been financed under 50-2-111(2).

History: En. Sec. 85, Ch. 197, L. 1967; amd. Sec. 1, Ch. 351, L. 1974; amd. Sec. 21, Ch. 187, L. 1977; R.C.M. 1947, 69-4508(4).

Cross-References

Property tax exemptions, Art. VIII, sec. 5, Mont. Const.

Deposit of funds received from the Department for inspections, 50-50-305, 50-51-303, 50-52-302.

50-2-115. Legal adviser to local boards. The county attorney shall serve as legal adviser to local boards as established by 50-2-104 and 50-2-106. The county attorney shall represent the local board in those matters relating to the functions, powers, and duties of local boards.

History: En. 69-4508.1 by Sec. 1, Ch. 273, L. 1975; R.C.M. 1947, 69-4508.1.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

50-2-116. Powers and duties of local boards. (1) Local boards shall:

(a) appoint a local health officer who is a physician or a person with a master's degree in public health or the equivalent and with appropriate experience, as determined by the department, and shall fix his salary;

(b) elect a chairman and other necessary officers;

(c) employ necessary qualified staff;

(d) adopt bylaws to govern meetings;

(e) hold regular meetings quarterly and hold special meetings as necessary;

(f) supervise destruction and removal of all sources of filth that cause disease;

(g) guard against the introduction of communicable disease;

(h) supervise inspections of public establishments for sanitary conditions;

(i) adopt necessary regulations that are no less stringent than state standards for the control and disposal of sewage from private and public buildings that is not regulated by Title 75, chapter 6, or Title 76, chapter 4. The regulations must describe standards for granting variances from the minimum requirements that are identical to standards promulgated by the board of health and environmental sciences and must provide for appeal of variance decisions to the department as required by 75-5-305.

(2) Local boards may:

(a) quarantine persons who have communicable diseases;

(b) require isolation of persons or things that are infected with communicable diseases;

(c) furnish treatment for persons who have communicable diseases;

(d) prohibit the use of places that are infected with communicable diseases;

(e) require and provide means for disinfecting places that are infected with communicable diseases;

(f) accept and spend funds received from a federal agency, the state, a school district, or other persons;

(g) contract with another local board for all or a part of local health services;

(h) reimburse local health officers for necessary expenses incurred in official duties;

(i) abate nuisances affecting public health and safety or bring action necessary to restrain the violation of public health laws or rules;

(j) adopt necessary fees to administer regulations for the control and disposal of sewage from private and public buildings (fees must be deposited with the county treasurer);

(k) adopt rules that do not conflict with rules adopted by the department:

(i) for the control of communicable diseases;

(ii) for the removal of filth that might cause disease or adversely affect public health;

(iii) on sanitation in public buildings that affects public health;

(iv) for heating, ventilation, water supply, and waste disposal in public accommodations that might endanger human lives; and

(v) for the maintenance of sewage treatment systems that do not discharge an effluent directly into state waters and that are not required to have an operating permit as required by rules adopted under 75-5-401.

History: En. Sec. 86, Ch. 197, L. 1967; amd. Sec. 4, Ch. 216, L. 1969; amd. Sec. 1, Ch. 196, L. 1971; amd. Secs. 108, 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 273, L. 1975; R.C.M. 1947, 69-4509; amd. Sec. 1, Ch. 709, L. 1985; amd. Sec. 2, Ch. 479, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (1)(i) requiring a local board to adopt regulations pertaining to control and disposal of sewage from certain public and private buildings; in (2)(j), before "fees", deleted "regulations and", after "fees" inserted "to administer regulations", and after "buildings" deleted "not currently connected to any municipal system"; in (2)(k)(v) deleted local board option for the adoption of rules for control and disposal of sewage from private and public buildings and before "treatment" inserted "sewage"; and made minor changes in style.

Applicability: Section 3, Ch. 479, L. 1991, provided: "[This act] applies to proceedings begun after October 1, 1991."

Cross-References

Nuisances, Title 27, ch. 30.

Exemptions from requirements for sanitarians, 37-40-102.

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-2-117. Appointment of local health officer by department when not made by local health board. (1) If a local health board does not appoint a health officer, the department may appoint a health officer 30 days after notification in writing has been given to the local health board.

(2) A health officer appointed by the department has the same authority as a health officer appointed by a local health board.

History: En. Sec. 88, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; R.C.M. 1947, 69-4511; amd. Sec. 1, Ch. 101, L. 1983.

50-2-118. Powers and duties of local health officers. (1) Local health officers or their authorized representatives shall:

(a) make inspections for sanitary conditions;

(b) as directed by the local board, issue written orders for the destruction and removal of filth which might cause disease;

(c) with written approval of the department, order buildings or facilities where people congregate closed during epidemics;

(d) on forms provided by the department, report communicable diseases to the department each week;

(e) before the first day of January, April, July, and October, give a report to the local board of sanitary conditions in the county, city, city-county, or district, together with a detailed account of his activities, on forms and containing information required by the department;

(f) before the 10th day after the report is given to the local board, send a copy of the report required by subsection (1)(e) of this section to the department;

(g) as prescribed by rules adopted by the department, establish and maintain quarantines;

(h) as prescribed by rules adopted by the department, supervise the disinfection of places at the expense of the local board when a period of quarantine ends;

(i) notify the department of his appointment and changes in membership of the local board;

(j) file a complaint with the appropriate court if this chapter or rules adopted by the local board or state department under this chapter are violated;

(k) validate state licenses issued by the department in accordance with chapters 50 through 53 of this title.

(2) With approval of the department, local health officers may forbid persons to assemble in a place if the assembly endangers public health.

(3) A local health officer who is a physician may be placed in charge of a communicable disease hospital, but a local health officer who is a physician is not required to act as a physician to the indigent.

(4) A local health officer who is not a physician shall not act as a physician to anyone.

History: En. Sec. 87, Ch. 197, L. 1967; amd. Sec. 2, Ch. 196, L. 1971; amd. Sec. 56, Ch. 349, L. 1974; R.C.M. 1947, 69-4510; amd. Sec. 1, Ch. 200, L. 1979; amd. Sec. 18, Ch. 708, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(k), after "50", substituted "through 53" for "51, and 52". Amendment effective January 1, 1992.

Cross-References

City-county director's powers and duties, 7-3-1346.

Tuberculosis control, Title 50, ch. 17.

Sexually transmitted diseases, Title 50, ch. 18.

50-2-119. Nursing services. (1) A local board may employ a qualified nurse for nursing services to persons under a physician's care who are confined to their homes.

(2) Before nursing services are provided, a physician must:

(a) determine that the person needs the services of a visiting nurse;

(b) direct the nurse to visit the person;

(c) specify the type and duration of services to be performed by the nurse.

(3) Persons shall pay for the services at rates set by the local board. Local boards, on behalf of persons receiving services, may accept payment from persons or public agencies either directly from or by contract with the person or agency. All payments received shall be deposited in a special county or city fund and used to defray expenses of providing the service.

History: En. Sec. 89, Ch. 197, L. 1967; R.C.M. 1947, 69-4512.

Cross-References

Licensing of nurses, Title 37, ch. 8.

50-2-120. Assistance from law enforcement officials. A state or local health officer may request a sheriff, constable, or other peace officer to assist him in carrying out the provisions of this chapter. If the officer does not render the service, he is guilty of a misdemeanor and may be removed from office.

History: En. Sec. 90, Ch. 197, L. 1967; R.C.M. 1947, 69-4513; amd. Sec. 1, Ch. 37, L. 1979.

Cross-References

Local government law enforcement, Title 7, ch. 32.

Penalty when none specified, 46-18-212.

50-2-121. Removal of diseased prisoner from jail by local health officer. (1) On written order of a local health officer, a diseased prisoner who is held in a jail and who is considered dangerous to the health of other prisoners may be removed to a hospital or other place of safety.

(2) If the prisoner was committed to jail by order of court, the order for removal and treatment shall be signed by the local health officer and filed with the court.

(3) When the prisoner recovers from the disease, he shall be returned to the jail.

(4) A prisoner removed to a hospital or clinic for treatment shall not be considered to have committed an escape.

History: En. Sec. 93, Ch. 197, L. 1967; R.C.M. 1947, 69-4516.

Cross-References

County jails, Title 7, ch. 32, part 22.

Municipal jails, Title 7, ch. 32, part 42.

50-2-122. Obstructing local health officer in the performance of his duties unlawful. It is unlawful to:

(1) hinder a local health officer in the performance of his duties under this chapter;

(2) remove or deface any placard or notice posted by the local health officer; or

(3) violate a quarantine regulation.

History: En. Sec. 94, Ch. 197, L. 1967; R.C.M. 1947, 69-4517.

Cross-References

Penalties for violations, 50-2-124.

50-2-123. Compliance order authorized. If a person refuses or neglects to comply with a written order of a state or local health officer within a reasonable time specified in the order, the state or local health officer may cause the order to be complied with and initiate an action to recover any expenses incurred from the person who refused or neglected to comply with the order. The action to recover expenses shall be brought in the name of the city or county.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(1).

50-2-124. Penalties for violations. (1) A person who does not comply with rules adopted by a local board is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $200.

(2) Except as provided in subsection (1) of this section and 50-2-123, a person who violates the provisions of this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor. On conviction, he shall be fined not less than $10 or more than $500, imprisoned for not more than 90 days, or both.

(3) Each day of violation constitutes a separate offense.

(4) Fines, except justice's court fines, shall be paid to the county treasurer of the county in which the violation occurs.

History: En. Sec. 96, Ch. 197, L. 1967; amd. Sec. 108, Ch. 349, L. 1974; amd. Sec. 3, Ch. 273, L. 1975; R.C.M. 1947, 69-4519(2) thru (4); amd. Sec. 2, Ch. 709, L. 1985; amd. Sec. 34, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Unlawful disposition of dead animals, 75-10-213.

CHAPTER 3

STATE FIRE PREVENTION AND INVESTIGATION PROGRAM

Part 1 — General Provisions

50-3-101. Definitions.
50-3-102. Powers and duties of department regarding state fire prevention and investigation.
50-3-103. Rules promulgated by department.
50-3-104. Repealed.
50-3-105. Repealed.
50-3-106. Appointment of special fire inspectors.
50-3-107. Repealed.
50-3-108. Repealed.
50-3-109. Tax on fire insurance premiums for maintenance of state fire prevention and investigation activities of department of justice.

Part 1

General Provisions

Part Cross-References

Local government fire protection, Title 7, ch. 33.

Fire hazards, Title 50, ch. 62, part 1.

50-3-101. Definitions. In this chapter, "department" means the department of justice and "fire prevention and investigation program" means the state fire prevention and investigation program of the department of justice provided for in 2-15-2005.

History: En. 50-3-101 by Code Commissioner, 1979; amd. Sec. 5, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Substituted definitions of Department and fire prevention and investigation program for former definition that read: "In this chapter "fire marshal" or "state fire marshal" means the state fire marshal provided for in 2-15-2005". Amendment effective April 29, 1991.

50-3-102. Powers and duties of department regarding state fire prevention and investigation. (1) For the purpose of reducing the state's fire loss, the department shall:

(a) inspect each unit of the Montana university system and other state buildings, including state institutions, as often as its budget and other inspection duties allow, but no more frequently than once each year unless requested by the commissioner of higher education for buildings in the university system, by the department of corrections and human services for state institutions, or by the department of administration for all other state buildings. A copy of the inspection report for units of the university system must be given to the commissioner of higher education, a copy of the inspection report for state institutions must be given to the department of corrections and human services, and a copy of the inspection report for all other state buildings must be given to the department of administration. The department of justice shall advise the commissioner of higher education and the directors of the departments of corrections and human services and administration concerning fire prevention, fire protection, and public safety when it distributes the reports.

(b) inspect public, business, or industrial buildings, as provided in chapter 61, and require conformance to law and rules promulgated under the provisions of this chapter;

(c) assist local fire and law enforcement authorities in arson investigations and may initiate or supervise these investigations when, in its judgment, the initiation or supervision is necessary;

(d) provide fire prevention and fire protection information to public officials and the general public;

(e) serve as the state entity primarily responsible for promoting fire safety at the state level;

(f) encourage coordination of all services and agencies in fire prevention matters to reduce duplication and fill voids in services;

(g) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices; and

(h) keep a record of all fires occurring in the state, the origin of the fires, and all facts, statistics, and circumstances relating to the fires that have been determined by investigations under the provisions of chapter 63. Except for statements of witnesses given during an investigation, information that may be held in confidence under 50-63-403, and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5, the record must be open at all times to public inspection.

(2) The department may adopt rules necessary for safeguarding life and property from the hazards of fire and carrying into effect the fire prevention laws of this state.

(3) The department shall adopt rules based on nationally recognized standards necessary for safeguarding life and property from the hazards associated with the manufacture, transportation, storage, sale, and use of explosive materials.

(4) If necessary to safeguard life and property under rules promulgated pursuant to this section, the department may maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules.

History: Ap. p. Sec. 1, Ch. 124, L. 1929; re-en. Sec. 2737.1, R.C.M. 1935; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; (1)(k), (1)(l)En. Secs. 19, 22, Ch. 148, L. 1911; re-en. Secs. 2756, 2759, R.C.M. 1921; re-en. Secs. 2756, 2759, R.C.M. 1935; amd. Secs. 36, 37, Ch. 187, L. 1977; Secs. 82-1226, 82-1229, R.C.M. 1947; R.C.M. 1947, 82-1202(1), (2), 82-1226, 82-1229; amd. Sec. 6, Ch. 145, L. 1979; amd. Sec. 2, Ch. 187, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 6, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 706 in (1) through (4), near beginning, substituted "department" for "state fire marshal"; substituted (1)(a) requiring inspection of state buildings for former (1)(a) and (1)(b) that read: "(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

(b) make at least one inspection a year of each unit of the Montana university system and submit a copy of the report to the commissioner of higher education with recommendations in regard to fire prevention, fire protection, and public safety"; in (1)(b), after "buildings", inserted "as provided in chapter 61"; in (1)(c), before "supervise", inserted "may initiate or" and before "supervision" inserted "the initiation or"; deleted former (1)(e) that read: "(e) review all training programs on investigation of accidental and incendiary fires"; deleted former (1)(g) that read: "(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards"; in (1)(e), after "level", deleted "and to represent the state in structural fire matters"; in (1)(f) substituted "fire prevention matters" for "structural fire matters"; in (1)(h), after "50-63-403", inserted "and criminal justice information subject to restrictions on dissemination in accordance with Title 44, chapter 5"; deleted (1)(l) that read: "(l) make an annual report to the attorney general containing a detailed statement of his official action and the transactions of his department, and the attorney general shall, in turn, submit the report to the governor with such recommendations and comments thereon as he considers necessary"; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

Department of Justice to review provisions for protection of state-owned buildings, 2-17-112.

Local government fire protection, Title 7, ch. 33.

Injunctions, Title 27, ch. 19.

Licensing of persons using explosives in construction or demolition, Title 37, ch. 72.

State fire prevention and investigation program to set fire safety standards for day-care centers, 52-2-734.

50-3-103. Rules promulgated by department. (1) Rules promulgated by the department by authority of 50-3-102 must be reasonable and calculated to effect the purposes of this chapter. They must include but are not limited to requirements for design, construction, installation, operation, storage, handling, maintenance, or use of structural requirements for various types of construction; building restrictions within congested districts; exit facilities from structures; fire extinguishers, fire alarm systems, and fire extinguishing systems; fire emergency drills; flue and chimney construction; heating devices; electrical wiring and equipment; air conditioning, ventilating, and other duct systems; refrigeration systems; flammable liquids; oil and gas wells; application of flammable finishes; explosives, acetylene, liquefied petroleum gas, and similar products; calcium carbide and acetylene generators; flammable motion picture film; combustible fibers; hazardous chemicals or materials; rubbish; open-flame devices; parking of vehicles; dust explosions; lightning protection; storage of smokeless powder and small arms primers; and other special fire hazards.

(2) If rules relate to building and equipment standards covered by the state or a municipal building code, the rules are effective upon approval of the department of commerce and filing with the secretary of state.

(3) Federal or other nationally recognized standards for fire protection may be adopted in whole or in part by reference.

(4) Rules must be adopted as prescribed in the Montana Administrative Procedure Act.

(5) A person violating any rule made under the provisions of this part is guilty of a misdemeanor.

History: Ap. p. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; Sec. 82-1202.1, R.C.M.; Ap. p. Sec. 1, Ch. 124, L. 1929; amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, Ch. 278, L. 1947; amd. Sec. 93, Ch. 199, L. 1965; amd. Sec. 2, Ch. 229, L. 1967; amd. Sec. 24, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 169, L. 1975; amd. Sec. 34, Ch. 187, L. 1977; amd. Sec. 2, Ch. 519, L. 1977; Sec. 82-1202, R.C.M. 1947; R.C.M. 1947, 82-1202(3), (4), 82-1202.1(1) thru (3), (5); amd. Sec. 3, Ch. 352, L. 1985; amd. Sec. 4, Ch. 506, L. 1989; amd. Sec. 7, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning of first sentence, substituted "department" for "state fire marshal" and near middle of second sentence inserted "fire extinguishers" and near end, after "chemicals", inserted "or materials"; in (3), at beginning, substituted "Federal or other nationally recognized standards for fire protection" for "Standards of the national fire protection association, United States bureau of standards, and American insurance association"; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Penalty where none specified, 46-18-212.

Building construction standards, Title 50, ch. 60.

State fire prevention and investigation program to adopt and enforce rules for fire safety in day-care centers, 52-2-734.

50-3-104. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 4, Ch. 148, L. 1911; re-en. Sec. 2741, R.C.M. 1921; re-en. Sec. 2741, R.C.M. 1935; R.C.M. 1947, 82-1207.

50-3-105. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(1).

50-3-106. Appointment of special fire inspectors. (1) Special fire inspectors may be appointed to perform any function of the fire prevention and investigation program.

(2) When performing these duties or attending a training course approved by the department, special fire inspectors may be paid at a rate not to exceed $56 a day plus travel expenses as provided for in 2-18-501 through 2-18-503, as amended.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(2); amd. Sec. 1, Ch. 121, L. 1979; amd. Sec. 8, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Substituted present (1) regarding appointment and duties of special fire inspectors for former language that read: "(1) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties"; in (2), after "course", substituted "approved by the department" for "conducted by the state fire marshal" and after "special" substituted "fire inspectors" for "deputy fire marshals". Amendment effective April 29, 1991.

50-3-107. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 5, Ch. 148, L. 1911; amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec. 2742, R.C.M. 1921; re-en. Sec. 2742, R.C.M. 1935; amd. Sec. 5, Ch. 229, L. 1967; amd. Sec. 1, Ch. 184, L. 1973; amd. Sec. 20, Ch. 453, L. 1977; R.C.M. 1947, 82-1208(3).

50-3-108. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 23, Ch. 148, L. 1911; re-en. Sec. 2760, R.C.M. 1921; re-en. Sec. 2760, R.C.M. 1935; amd. Sec. 42, Ch. 177, L. 1965; R.C.M. 1947, 82-1230.

50-3-109. Tax on fire insurance premiums for maintenance of state fire prevention and investigation activities of department of justice. Each insurer authorized to effect insurance on risks enumerated in 19-11-512 doing business in this state shall pay to the state auditor and commissioner of insurance ex officio during the month of February or March in each year, in addition to the taxes on premiums required by law to be paid by it, a tax of 1% on the fire portion of the direct premiums on such risks received during the calendar year next preceding after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; re-en. Sec. 2761, R.C.M. 1921; re-en. Sec. 2761, R.C.M. 1935; amd. Sec. 1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, L. 1947; amd. Sec. 1, Ch. 182, L. 1959; amd. Sec. 1, Ch. 312, L. 1969; amd. Sec. 1, Ch. 110, L. 1971; R.C.M. 1947, 82-1231; amd. Sec. 1, Ch. 703, L. 1991.

Compiler's Comments

1991 Amendment: Near middle increased tax on fire insurance premiums from 3/4 of 1% to 1%. Amendment effective July 1, 1991.

Cross-References

State Auditor, Art. VI, sec. 1, Mont. Const.; Title 2, ch. 15, part 6.

Commissioner of Insurance, 2-15-1903.

Insurers to report premiums for tax purposes, 33-2-705.

CHAPTER 4

RESERVED

CHAPTER 5

HOSPITALS AND RELATED FACILITIES

Part 1 — General Provisions

50-5-101. Definitions.
50-5-102. Repealed.
50-5-103. Rules and standards — accreditation by joint commission.
50-5-104. Certain exemptions for spiritual healing institution.
50-5-105. Discrimination prohibited.
50-5-106. Records and reports required of health care facilities — confidentiality.
50-5-107. Unlawful use of word nursing.
50-5-108. Injunction.
50-5-109. Penalty.

Part 2 — Licensing

50-5-201. License requirements.
50-5-202. License fees.
50-5-203. Application for license.
50-5-204. Issuance and renewal of licenses — inspections.
50-5-205. Repealed.
50-5-206. Repealed.
50-5-207. Denial, suspension, or revocation of health care facility license — provisional license.
50-5-208. Hearing required.
50-5-209. Repealed.
50-5-210. Department to make rules — standards for hospices.
50-5-211. Hospital hospice programs — exemptions from separate licensure.
50-5-212. Organ procurement program required.
50-5-213 through 50-5-220 reserved.
50-5-221. Civil penalty — injunction.
50-5-222 through 50-5-224 reserved.
50-5-225. Personal-care facilities — services to residents.
50-5-226. Placement in personal-care facilities.
50-5-227. Licensing personal-care facilities.
50-5-228. Limited licensing.
50-5-229. Life-threatening situations — immediate license suspension.
50-5-230. Enforcement — denial, suspension, or revocation of license — criminal and civil penalties — injunctions.
50-5-231. Exemption from inspection — accredited hospital laboratories.

Part 3 — Certificate of Need

50-5-301. When certificate of need is required — definitions.
50-5-302. Letter of intent — application and review process.
50-5-303. Repealed.
50-5-304. Review criteria, required findings, and standards.
50-5-305. Period of validity of approved application.
50-5-306. Right to hearing and appeal.
50-5-307. Civil penalty — injunction.
50-5-308. Special circumstances.
50-5-309. Exemptions from certificate of need review.
50-5-310. Fees.
50-5-311 through 50-5-315 reserved.
50-5-316. Certificate of need for residential treatment facility.
50-5-317. Repealed.

Part 4 — State Plans and Programs—Federal Aid

50-5-401. Repealed.
50-5-402. Administration of state medical facility plan.
50-5-403. State plan.
50-5-404. Duties of department.
50-5-405. Contracts with federal agencies.
50-5-406. Federal funds.
50-5-407. Publicity as to plans and hearing.
50-5-408. Applications for construction projects.
50-5-409. Hearing on denial of application.
50-5-410. Forwarding of application.
50-5-411. Consolidated applications.
50-5-412. Repealed.
50-5-413 through 50-5-420 reserved.
50-5-421 through 50-5-424. Repealed.

Part 5 — Right to Refuse Participation in Sterilization

50-5-501. Definitions.
50-5-502. Refusal by hospital or health care facility to participate in sterilization.
50-5-503. Refusal by individual to participate in sterilization.
50-5-504. Unlawful to interfere with right of refusal.
50-5-505. Refusal not grounds for loss of privileges, immunities, or public benefits.

Part 6 — Family Practice Residency Training

50-5-601. Short title.
50-5-602. Definitions.
50-5-603. Montana family practice training program.
50-5-604 through 50-5-610 reserved.
50-5-611. Funding limitations.

Parts 7 through 10 reserved

Part 11 — Long-Term Health Care Facilities

50-5-1101. Short title.
50-5-1102. Findings and purpose.
50-5-1103. Definitions.
50-5-1104. Rights of long-term care facility residents.
50-5-1105. Long-term care facility to adopt and post residents' rights.
50-5-1106. Resident's rights devolve to authorized representative.
50-5-1107. Enforcement of residents' rights.

Chapter Cross-References

Limits on liability of health care provider in emergency situations, 27-1-734.

Part 1

General Provisions

Part Cross-References

Medical services and boarding homes for the aged, Title 7, ch. 34.

Assignment of right to periodic installments for certain future damages, 25-9-405.

Montana Elder Abuse Prevention Act, Title 52, ch. 3, part 8.

Health care services, Title 53, ch. 6.

Community mental health centers, Title 53, ch. 21, part 2.

Community-based nursing homes — Center for the Aged, Title 53, ch. 21, part 4.

Health facility development, Title 90, ch. 7.

50-5-101. Definitions. As used in parts 1 through 4 of this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Accreditation" means a designation of approval.

(2) "Adult day-care center" means a facility, freestanding or connected to another health care facility, which provides adults, on an intermittent basis, with the care necessary to meet the needs of daily living.

(3) "Affected person" means an applicant for certificate of need, a member of the public who will be served by the proposal, a health care facility located in the geographic area affected by the application, an agency which establishes rates for health care facilities, a third-party payer who reimburses health care facilities in the area affected by the proposal, or an agency which plans or assists in planning for such facilities.

(4) "Ambulatory surgical facility" means a facility, not part of a hospital, which provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

(5) "Batch" means those letters of intent to seek approval for new beds or major medical equipment that are accumulated during a single batching period.

(6) "Batching period" means a period, not exceeding 1 month, established by department rule during which letters of intent to seek approval for new beds or major medical equipment are accumulated pending further processing of all letters of intent within the batch.

(7) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(8) "Capital expenditure" means:

(a) an expenditure made by or on behalf of a health care facility that, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance; or

(b) a lease, donation, or comparable arrangement that would be a capital expenditure if money or any other property of value had changed hands.

(9) "Certificate of need" means a written authorization by the department for a person to proceed with a proposal subject to 50-5-301.

(10) "Challenge period" means a period, not exceeding 1 month, established by department rule during which any person may apply for comparative review with an applicant whose letter of intent has been received during the preceding batching period.

(11) "Chemical dependency facility" means a facility whose function is the treatment, rehabilitation, and prevention of the use of any chemical substance, including alcohol, which creates behavioral or health problems and endangers the health, interpersonal relationships, or economic function of an individual or the public health, welfare, or safety.

(12) "Clinical laboratory" means a facility for the microbiological, serological, chemical, hematological, radiobioassay, cytological, immunohematological, pathological, or other examination of materials derived from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or assessment of a medical condition.

(13) "College of American pathologists" means the organization nationally recognized by that name with headquarters in Traverse City, Michigan, that surveys clinical laboratories upon their requests and accredits clinical laboratories that it finds meet its standards and requirements.

(14) "Comparative review" means a joint review of two or more certificate of need applications which are determined by the department to be competitive in that the granting of a certificate of need to one of the applicants would substantially prejudice the department's review of the other applications.

(15) "Construction" means the physical erection of a health care facility and any stage thereof, including ground breaking, or remodeling, replacement, or renovation of an existing health care facility.

(16) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(17) "Federal acts" means federal statutes for the construction of health care facilities.

(18) "Governmental unit" means the state, a state agency, a county, municipality, or political subdivision of the state, or an agency of a political subdivision.

(19) "Health care facility" or "facility" means any institution, building, or agency or portion thereof, private or public, excluding federal facilities, whether organized for profit or not, used, operated, or designed to provide health services, medical treatment, or nursing, rehabilitative, or preventive care to any person or persons. The term does not include offices of private physicians or dentists. The term includes but is not limited to ambulatory surgical facilities, health maintenance organizations, home health agencies, hospices, hospitals, infirmaries, kidney treatment centers, long-term care facilities, medical assistance facilities, mental health centers, outpatient facilities, public health centers, rehabilitation facilities, residential treatment facilities, and adult day-care centers.

(20) "Health maintenance organization" means a public or private organization which provides or arranges for health care services to enrollees on a prepaid or other financial basis, either directly through provider employees or through contractual or other arrangements with a provider or group of providers.

(21) "Home health agency" means a public agency or private organization or subdivision thereof which is engaged in providing home health services to individuals in the places where they live. Home health services must include

the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(22) "Hospice" means a coordinated program of home and inpatient health care that provides or coordinates palliative and supportive care to meet the needs of a terminally ill patient and his family arising out of physical, psychological, spiritual, social, and economic stresses experienced during the final stages of illness and dying and that includes formal bereavement programs as an essential component.

(23) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care, emergency care, or any other service as allowed by state licensing authority. A hospital has an organized medical staff which is on call and available within 20 minutes, 24 hours per day, 7 days per week, and provides 24-hour nursing care by licensed registered nurses. This term includes hospitals specializing in providing health services for psychiatric, mentally retarded, and tubercular patients.

(24) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured, with the following subdefinitions:

(a) an "infirmary—A" provides outpatient and inpatient care;

(b) an "infirmary—B" provides outpatient care only.

(25) "Joint commission on accreditation of hospitals" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to any health care facility that it finds meets its standards and requirements.

(26) "Kidney treatment center" means a facility which specializes in treatment of kidney diseases, including freestanding hemodialysis units.

(27) (a) "Long-term care facility" means a facility or part thereof which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care to a total of two or more persons or personal care to more than four persons who are not related to the owner or administrator by blood or marriage. The term does not include adult foster care licensed under 52-3-303, community homes for the developmentally disabled licensed under 53-20-305, community homes for persons with severe disabilities licensed under 52-4-203, youth care facilities licensed under 41-3-1142, hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care, or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(b) "Skilled nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed registered nurse on a 24-hour basis.

(c) "Intermediate nursing care" means the provision of nursing care services, health-related services, and social services under the supervision of a licensed nurse to patients not requiring 24-hour nursing care.

(d) "Intermediate developmental disability care" means the provision of nursing care services, health-related services, and social services for the developmentally disabled, as defined in 53-20-102(4), or persons with related problems.

(e) "Personal care" means the provision of services and care which do not require nursing skills to residents needing some assistance in performing the activities of daily living.

(28) "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions which is used to provide medical or other health services and costs a substantial sum of money.

(29) "Medical assistance facility" means a facility that:

(a) provides inpatient care to ill or injured persons prior to their transportation to a hospital or provides inpatient medical care to persons needing that care for a period of no longer than 96 hours; and

(b) either is located in a county with fewer than six residents per square mile or is located more than 35 road miles from the nearest hospital.

(30) "Mental health center" means a facility providing services for the prevention or diagnosis of mental illness, the care and treatment of mentally ill patients or the rehabilitation of such persons, or any combination of these services.

(31) "Nonprofit health care facility" means a health care facility owned or operated by one or more nonprofit corporations or associations.

(32) "Observation bed" means a bed occupied for not more than 6 hours by a patient recovering from surgery or other treatment.

(33) "Offer" means the holding out by a health care facility that it can provide specific health services.

(34) "Outpatient facility" means a facility, located in or apart from a hospital, providing, under the direction of a licensed physician, either diagnosis or treatment, or both, to ambulatory patients in need of medical, surgical, or mental care. An outpatient facility may have observation beds.

(35) "Patient" means an individual obtaining services, including skilled nursing care, from a health care facility.

(36) "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

(37) "Public health center" means a publicly owned facility providing health services, including laboratories, clinics, and administrative offices.

(38) "Rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons by providing comprehensive medical evaluations and services, psychological and social services, or vocational evaluation and training or any combination of these services and in which the major portion of the services is furnished within the facility.

(39) "Resident" means a person who is in a long-term care facility for intermediate or personal care.

(40) "Residential psychiatric care" means active psychiatric treatment provided in a residential treatment facility to psychiatrically impaired individuals with persistent patterns of emotional, psychological, or behavioral

dysfunction of such severity as to require 24-hour supervised care to adequately treat or remedy the individual's condition. Residential psychiatric care must be individualized and designed to achieve the patient's discharge to less restrictive levels of care at the earliest possible time.

(41) "Residential treatment facility" means a facility operated for the primary purpose of providing residential psychiatric care to persons under 21 years of age.

(42) "State health plan" means the plan prepared by the department to project the need for health care facilities within Montana and approved by the statewide health coordinating council and the governor.

History: Ap. p. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; Ap. p. Sec. 159, Ch. 197, L. 1967; amd. Sec. 1, Ch. 290, L. 1969; amd. Sec. 1, Ch. 197, L. 1971; amd. Sec. 1, Ch. 448, L. 1973; amd. Sec. 1, Ch. 150, L. 1974; amd. Sec. 1, Ch. 447, L. 1975; amd. Sec. 22, Ch. 187, L. 1977; R.C.M. 1947, 69-4102(1), 69-5201; amd. Sec. 1, Ch. 347, L. 1979; amd. Sec. 1, Ch. 432, L. 1981; amd. Sec. 1, Ch. 433, L. 1981; amd. Sec. 1, Ch. 324, L. 1983; amd. Secs. 1, 13, Ch. 329, L. 1983; amd. Sec. 7, Ch. 597, L. 1983; amd. Sec. 1, Ch. 641, L. 1983; amd. Sec. 9, Ch. 713, L. 1985; amd. Sec. 108, Ch. 370, L. 1987; amd. Sec. 1, Ch. 450, L. 1987; amd. Sec. 1, Ch. 477, L. 1987; amd. Sec. 13, Ch. 330, L. 1989; amd. Sec. 1, Ch. 616, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 764, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 764 inserted definition of residential psychiatric care; and in definition of residential treatment facility, after "a facility", deleted "of not less than 30 beds that is", after "operated" deleted "by a nonprofit corporation or association", and after "providing" substituted "residential psychiatric care" for "long-term treatment services for mental illness in a nonhospital-based residential setting". Amendment effective July 1, 1991.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Cross-References

Health facility development — state financing or refinancing of eligible health facilities, Title 90, ch. 7.

50-5-102. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 160, Ch. 197, L. 1967; R.C.M. 1947, 69-5202.

50-5-103. Rules and standards — accreditation by joint commission. (1) The department shall promulgate and adopt rules and minimum standards for implementation of parts 1 through 4.

(2) Any facility covered by this chapter shall comply with the state and federal requirements relating to construction, equipment, and fire and life safety.

(3) The department shall extend a reasonable time for compliance with rules for parts 1 through 4 after adoption.

(4) Any hospital that furnishes written evidence, including the recommendation for future compliance statements to the department of its accred-

itation granted by the joint commission on accreditation of hospitals, is eligible for licensure in the state for the accreditation period and may not be subjected to an inspection by the department, except that the department may inspect any licensed health care facility to answer specific complaints made in writing by any person against the facility when such complaints pertain to licensing requirements. Inspection by the department upon such complaint shall be limited to the specific area or condition of the health care facility to which the complaint pertains.

(5) The department may consider as eligible for licensure during the accreditation period any health care facility, other than a hospital, that furnishes written evidence, including the recommendation for future compliance statements, of its accreditation by the joint commission on accreditation of health care organizations. The department may inspect a health care facility considered eligible for licensure under this section to ensure compliance with state licensure standards.

History: En. Sec. 171, Ch. 197, L. 1967; amd. Sec. 22, Ch. 366, L. 1969; amd. Sec. 3, Ch. 448, L. 1973; amd. Sec. 74, Ch. 349, L. 1974; R.C.M. 1947, 69-5213; amd. Sec. 2, Ch. 347, L. 1979; amd. Sec. 2, Ch. 432, L. 1981; amd. Sec. 1, Ch. 279, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (5) authorizing Department to consider as eligible for licensure any health care facility, other than a hospital, accredited by the Joint Commission on Accreditation of Health Care Organizations. Amendment effective July 1, 1991.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

State fire prevention and investigation program, Title 50, ch. 3.

Fire protection equipment, Title 50, ch. 39.

Building construction standards, Title 50, ch. 60.

50-5-104. Certain exemptions for spiritual healing institution. Parts 1 through 3 and rules and standards adopted by the department may not authorize the supervision, regulation, or control of care or treatment of persons in any home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination. However, a license is required and the minimum standards referred to in 50-5-103(2) apply.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(2); amd. Sec. 3, Ch. 347, L. 1979.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

50-5-105. Discrimination prohibited. (1) All phases of the operation of a health care facility shall be without discrimination against anyone on the basis of race, creed, religion, color, national origin, sex, age, marital status, physical or mental handicap, or political ideas.

(2) (a) A health care facility may not refuse to admit a person to the facility solely because the person has an HIV-related condition.

(b) For the purposes of this subsection (2) the following definitions apply:

(i) "HIV" means the human immunodeficiency virus identified as the causative agent of acquired immunodeficiency syndrome (AIDS) and includes all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological system and leave the infected person immunodeficient or neurologically impaired.

(ii) "HIV-related condition" means any medical condition resulting from an HIV infection, including but not limited to seropositivity for HIV.

(3) A person who operates a facility may not discriminate among the patients of licensed physicians. The free and confidential professional relationship between a licensed physician and patient shall continue and remain unaffected.

(4) Except for a hospital that employs its medical staff, a hospital considering an application for staff membership or granting privileges within the scope of the applicant's license may not deny the application or privileges because the applicant is licensed under Title 37, chapter 5 or 6.

(5) This section does not preclude a hospital from limiting membership or privileges based on education, training, or other relevant criteria.

History: En. Sec. 175, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5217(1); amd. Sec. 4, Ch. 347, L. 1979; amd. Sec. 1, Ch. 152, L. 1989; amd. Sec. 1, Ch. 309, L. 1989.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Freedom from discrimination provided, 49-1-102.

Discrimination in public accommodations prohibited, 49-2-304.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-5-106. Records and reports required of health care facilities — confidentiality. Health care facilities shall keep records and make reports as required by the department. Before February 1 of each year, every licensed health care facility shall submit an annual report for the preceding calendar year to the department. The report shall be on forms and contain information specified by the department. Information received by the department or board through reports, inspections, or provisions of parts 1 and 2 may not be disclosed in a way which would identify patients. A department employee who discloses information which would identify a patient shall be dismissed from employment and subject to the provisions of 45-7-401 and 50-16-551, unless the disclosure was authorized in writing by the patient, his guardian, or his agent in accordance with Title 50, chapter 16, part 5. Information and statistical reports from health care facilities which are considered necessary by the department for health planning and resource development activities will be made available to the public and the health planning agencies within the state. Applications by health care facilities for certificates of need and any information relevant to review of these applications, pursuant to part 3, shall be accessible to the public.

History: En. Sec. 176, Ch. 197, L. 1967; R.C.M. 1947, 69-5218; amd. Sec. 5, Ch. 347, L. 1979; amd. Sec. 13, Ch. 329, L. 1983; amd. Sec. 26, Ch. 632, L. 1987.

Compiler's Comments

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and

amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Cross-References

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-5-107. Unlawful use of word nursing. It is unlawful for any facility operating in this state to use the word "nursing" in its name, signs, advertising, etc., unless that facility does in fact provide 24-hour nursing care by licensed nurses.

History: En. 69-5203.1 by Sec. 2, Ch. 448, L. 1973; R.C.M. 1947, 69-5203.1.

Cross-References

Unfair trade practices, Title 30, ch. 14, part 2.

Nursing, Title 37, ch. 8.

50-5-108. Injunction. The department, on advice of the attorney general, may bring an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a facility which is in violation of any provision of parts 1 or 4 of this chapter.

History: En. Sec. 178, Ch. 197, L. 1967; amd. Sec. 75, Ch. 349, L. 1974; R.C.M. 1947, 69-5220; amd. Sec. 6, Ch. 347, L. 1979.

Cross-References

Duties of Attorney General, 2-15-501.

Injunctive relief procedures, Title 27, ch. 19.

50-5-109. Penalty. A person who violates provisions of parts 1 or 4 is guilty of a misdemeanor. On conviction he shall be fined not more than $100 for the first offense and not more than $300 for each subsequent offense.

History: En. Sec. 179, Ch. 197, L. 1967; R.C.M. 1947, 69-5221; amd. Sec. 7, Ch. 347, L. 1979.

Part 2

Licensing

50-5-201. License requirements. (1) A licensee who contemplates construction of or alteration or addition to a health care facility shall submit plans and specifications to the department for preliminary inspection and approval prior to commencing construction.

(2) No person may operate a health care facility unless the facility is licensed by the department. Licenses may be issued for a period of 1 to 3 years in duration. A license is valid only for the person and premises for which it was issued. A license may not be sold, assigned, or transferred.

(3) Upon discontinuance of the operation or upon transfer of ownership of a facility, the license must be returned to the department.

(4) Licenses shall be displayed in a conspicuous place near the admitting office of the facility.

History: En. Sec. 161, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5203; amd. Sec. 2, Ch. 37, L. 1979; amd. Sec. 8, Ch. 347, L. 1979; amd. Sec. 1, Ch. 405, L. 1991.

Compiler's Comments

1991 Amendment: In (2), at end of second sentence, substituted "may be issued for a period of 1 to 3 years in duration" for "shall be for 1 year unless issued for a shorter period".

Cross-References

One-step licensing — inspection by other department, Title 50, ch. 8.

50-5-202. License fees. The department shall collect fees for each license issued for deposit in the state general fund as follows:

(1) facilities with 20 beds or less—$20;

(2) facilities with 21 beds or more—$1 per bed.

History: En. Sec. 162, Ch. 197, L. 1967; amd. Sec. 1, Ch. 282, L. 1975; R.C.M. 1947, 69-5204.

Cross-References

Fund structure, Title 17, ch. 2.

50-5-203. Application for license. The procedure to apply for a license is as follows:

(1) At least 30 days prior to the opening of a facility and after that no later than the expiration date of the license, application is made to the department accompanied by the license fee.

(2) The application shall contain:

(a) the name and address of the applicant if an individual, the name and address of each member if a firm, partnership, or association, or the name and address of each officer if a corporation;

(b) the location of the facility;

(c) the name of the person or persons who will manage or supervise the facility;

(d) the number and type of patients or residents for which care is provided;

(e) any information which the department may require pertaining to the number, experience, and training of employees;

(f) information on ownership, contract, or lease agreement if operated by a person other than the owner.

History: En. Sec. 163, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 2, Ch. 282, L. 1975; R.C.M. 1947, 69-5205; amd. Sec. 2, Ch. 405, L. 1991.

Compiler's Comments

1991 Amendment: Near middle of (1), after "facility and", substituted "after that no later than the expiration date of the license" for "annually thereafter".

50-5-204. Issuance and renewal of licenses — inspections. (1) After receipt of a new application, the department or its authorized agent shall conduct an initial inspection of the facility within 45 days.

(2) After receipt of an application for renewal of a license, the department or its authorized agent shall inspect the facility without prior notice to the operator or staff.

(3) If the department determines that the facility meets minimum standards and the proposed or existing staff is qualified, the department shall issue a license for a period of 1 to 3 years in duration.

(4) If minimum standards are not met, the department may issue a provisional license for less than 1 year if operation will not result in undue hazard to patients or residents or if the demand for accommodations offered is not met in the community.

(5) The minimum standards which home health agencies must meet in order to be licensed must be as outlined in 42 U.S.C. 1395x(o), as amended, and in rules implementing it which add minimum standards.

(6) The department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection, and access to all records must be granted at all reasonable times.

History: En. Sec. 164, Ch. 197, L. 1967; R.C.M. 1947, 69-5206; amd. Sec. 9, Ch. 347, L. 1979; amd. Sec. 1, Ch. 5, Sp. L. 1981; amd. Sec. 1, Ch. 443, L. 1985; amd. Sec. 1, Ch. 143, L. 1987; amd. Sec. 3, Ch. 405, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning after "new", deleted "or renewal" and at end substituted "conduct an initial inspection of the facility within 45 days" for "inspect the facility without prior notice to the operator or staff"; inserted (2) governing inspection after receipt of an application; and at end of (3) substituted "a period of 1 to 3 years in duration" for "1 year".

Cross-References

Exemption from inspection — accredited hospital laboratories, 50-5-231.

Confidentiality of health care information, Title 50, ch. 16, part 5.

Investigation of complaint under Montana Elder Abuse Prevention Act, 52-3-811.

50-5-205. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 165, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 23, Ch. 187, L. 1977; R.C.M. 1947, 69-5207.

50-5-206. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 166, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5208.

50-5-207. Denial, suspension, or revocation of health care facility license — provisional license. (1) The department may deny, suspend, or revoke a health care facility license if any of the following circumstances exist:

(a) The facility fails to meet the minimum standards pertaining to it prescribed under 50-5-103.

(b) The staff is insufficient in number or unqualified by lack of training or experience.

(c) The applicant or any person managing it has been convicted of a felony and denial of a license on that basis is consistent with 37-1-203 or the applicant otherwise shows evidence of character traits inimical to the health and safety of patients or residents.

(d) The applicant does not have the financial ability to operate the facility in accordance with law or rules or standards adopted by the department.

(e) There is cruelty or indifference affecting the welfare of the patients or residents.

(f) There is misappropriation of the property or funds of a patient or resident.

(g) There is conversion of the property of a patient or resident without his consent.

(h) Any provision of parts 1 through 3 is violated.

(2) The department may reduce a license to provisional status if as a result of an inspection it is determined minimum standards are not being met.

(3) The denial, suspension, or revocation of a health care facility license is not subject to the certificate of need requirements of part 3.

History: En. Sec. 167, Ch. 197, L. 1967; R.C.M. 1947, 69-5209; amd. Sec. 10, Ch. 347, L. 1979.

Cross-References

Montana Elder Abuse Protection Act, Title 52, ch. 3, part 8.

50-5-208. Hearing required. (1) A license may not be denied, suspended, or revoked without notice and an opportunity for a hearing before the board.

(2) Notice shall be given the applicant or licensee of a date, not less than 15 days after mailing or service, for a hearing before the board.

(3) The decision of the board is final 30 days after it is mailed or served unless the applicant or licensee commences an action in the district court to appeal the decision. An appeal shall be in the district court where the facility is located or will be located.

History: En. Sec. 168, Ch. 197, L. 1967; amd. Sec. 73, Ch. 349, L. 1974; R.C.M. 1947, 69-5210.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-5-209. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 177, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5219.

50-5-210. Department to make rules — standards for hospices. (1) The department shall by rule establish standards for the licensure of a hospice. These standards must consider the terminally ill patient and his family as a unit and require service delivery through a medically directed interdisciplinary team of professionals and volunteers acting under a defined hospice administration.

(2) A hospice must meet the standards of care defined by law for any skilled care it provides that normally would be provided by a licensed facility such as a hospital, skilled nursing facility, or home health agency.

History: En. Sec. 2, Ch. 324, L. 1983.

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

50-5-211. Hospital hospice programs — exemptions from separate licensure. A hospice program provided by a hospital need not be separately licensed if the department finds that such program meets the standards of 50-5-210.

History: En. Sec. 3, Ch. 324, L. 1983.

50-5-212. Organ procurement program required. The administrator of a hospital licensed under this chapter shall as a condition of licensure under 50-5-201:

(1) establish a written protocol for the identification of potential organ donors that:

(a) assures that families of potential organ donors are made aware of the option of organ or tissue donation and their option to decline;

(b) encourages discretion and sensitivity with respect to the circumstances, views, and beliefs of families of potential organ donors; and

(c) requires that a qualified organ procurement agency be notified of potential organ donors;

(2) designate and train a person or persons to represent him for purposes of requesting an anatomical gift as provided in 72-17-213; and

(3) make known to the public that the hospital has an organ procurement program as described in subsection (1).

History: En. Sec. 3, Ch. 219, L. 1987; amd. Sec. 1, Ch. 540, L. 1989.

Cross-References

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-5-213 through 50-5-220 reserved.

50-5-221. Civil penalty — injunction. (1) A person who violates the terms of this part is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of any provision of this part, in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 11, Ch. 347, L. 1979.

Cross-References

Duty of County Attorney in state matters, 7-4-2716.

Injunctions, Title 27, ch 19.

Criminal responsibilities of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

50-5-222 through 50-5-224 reserved.

50-5-225. Personal-care facilities — services to residents. A personal-care facility must provide the following services to facility residents:

(1) residential services, such as laundry, housekeeping, food service, and either providing or making available provision for local transportation;

(2) personal assistance services, such as assistance by staff as required by residents in eating, walking, dressing, grooming, and similar routine living tasks;

(3) recreational activities; and

(4) supervision of self-medication.

History: **En. Sec. 1, Ch. 597, L. 1983.**

50-5-226. Placement in personal-care facilities. (1) A personal-care facility may not have as a resident a person who is:

(a) in need of medical or physical restraints;

(b) nonambulatory or bedridden;

(c) totally incontinent; or

(d) less than 18 years of age.

(2) The department shall, in consultation with the department of social and rehabilitation services, provide by rule:

(a) an application or placement procedure informing a prospective resident and, if applicable, his physician of:

(i) physical and mental standards for residents of personal-care facilities;

(ii) requirements for placement in a facility with a higher standard of care if a resident's condition deteriorates; and

(iii) the services offered by the facility and services that a resident may receive from third-party providers while resident in the facility;

(b) standards to be used by a facility and, if appropriate, by a screening agency to screen residents and prospective residents to prevent residence by persons prohibited by subsection (1);

(c) a method by which the results of any screening decision made pursuant to rules established under subsection (2)(b) may be appealed by the facility operator or by or on behalf of a resident or prospective resident.

History: **En. Sec. 2, Ch. 597, L. 1983; amd. Sec. 1, Ch. 140, L. 1985.**

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

50-5-227. Licensing personal-care facilities. (1) The department shall, in consultation with the department of social and rehabilitation services, by rule adopt standards for licensing and operation of personal-care facilities to implement the provisions of 50-5-225 and 50-5-226.

(2) The department may by rule establish license fees, inspection fees, and fees for patient screening. Such fees must be reasonably related to service costs.

History: **En. Sec. 3, Ch. 597, L. 1983.**

Cross-References

Adoption and publication of rules — Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

50-5-228. Limited licensing. The department may grant a license that is provisional upon the correction of noncompliance with provisions of 50-5-225 through 50-5-230 or rules adopted pursuant to 50-5-225 through 50-5-230. A provisional license may be granted only for a specific period of time and may not be renewed.

History: En. Sec. 4, Ch. 597, L. 1983.

50-5-229. Life-threatening situations — immediate license suspension. If the department has reason to believe that a life-threatening situation exists relating to residents of a personal-care facility, whether caused by an act or omission of the facility operator, act of nature, or any other cause, it may immediately suspend the facility's license and require evacuation of the facility. Within 5 days of such suspension, the department shall show cause in the district court of the county in which the facility is located why such suspension should be extended or the license permanently or temporarily revoked. After a hearing, the district court may remove the suspension or, upon finding sufficient cause, may:

(1) extend the license suspension until the life-threatening emergency has abated;

(2) order a conditional revocation or suspension of the license subject to correction of any life-threatening deficiency by the facility operator; or

(3) revoke the facility license.

History: En. Sec. 5, Ch. 597, L. 1983.

50-5-230. Enforcement — denial, suspension, or revocation of license — criminal and civil penalties — injunctions. (1) The department may deny, suspend, or revoke a personal-care facility license for failure to meet the minimum standards as set forth in 50-5-225 through 50-5-230 or applicable health standards established by the department.

(2) The department or the county attorney of the county in which the facility is located may, after notice to the facility operator of noncompliance with 50-5-226(1) and failure of the operator to correct such noncompliance within a period of time, which may not be less than 10 days, set forth in the notice, petition the district court of the county in which the facility is located for the imposition of a civil penalty not to exceed $500 per violation. Money collected as a civil penalty must be deposited in the state general fund.

(3) The department or the county attorney of the county in which the facility is located may bring an action in the district court of that county to enjoin any violation of a provision of 50-5-225 through 50-5-230.

(4) In addition to all other enforcement measures, a violation of the provisions of 50-5-225 through 50-5-230 is a misdemeanor, punishable upon conviction as provided in 46-18-212.

History: En. Sec. 6, Ch. 597, L. 1983.

Cross-References

Duty of County Attorney in state matters, 7-4-2716.

Injunctions, Title 27, ch 19.

Criminal responsibilities of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

50-5-231. Exemption from inspection — accredited hospital laboratories. (1) Any clinical laboratory that furnishes written evidence to the department of its accreditation by the college of American pathologists is exempt from inspection by the department during the period of accreditation.

(2) Subsection (1) applies only to those clinical laboratories operated by a hospital licensed by Montana.

History: En. Secs. 2, 3, Ch. 433, L. 1981.

Part 3

Certificate of Need

50-5-301. When certificate of need is required — definitions. (1) Unless a person has submitted an application for and is the holder of a certificate of need granted by the department, he may not initiate any of the following:

(a) the incurring of an obligation by or on behalf of a health care facility for any capital expenditure, other than to acquire an existing health care facility or to replace major medical equipment with equipment performing substantially the same function and in the same manner, that exceeds the expenditure thresholds established in subsection (4). The costs of any studies, surveys, designs, plans, working drawings, specifications, and other activities (including staff effort, consulting, and other services) essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure is made must be included in determining if the expenditure exceeds the expenditure thresholds.

(b) a change in the bed capacity of a health care facility through an increase in the number of beds or a relocation of beds from one health care facility or site to another, unless:

(i) the number of beds involved is 10 or less or 10% or less of the licensed beds (if fractional, rounded down to the nearest whole number), whichever figure is smaller, in any 2-year period;

(ii) a letter of intent is submitted to the department; and

(iii) the department determines the proposal will not significantly increase the cost of care provided or exceed the bed need projected in the state health plan;

(c) the addition of a health service that is offered by or on behalf of a health care facility which was not offered by or on behalf of the facility within the 12-month period before the month in which the service would be offered and which will result in additional annual operating and amortization expenses of $150,000 or more;

(d) the acquisition by any person of major medical equipment, provided such acquisition would have required a certificate of need pursuant to subsection (1)(a) or (1)(c) if it had been made by or on behalf of a health care facility;

(e) the incurring of an obligation for a capital expenditure by any person or persons to acquire 50% or more of an existing health care facility unless:

(i) the person submits the letter of intent required by 50-5-302(2); and

(ii) the department finds that the acquisition will not significantly increase the cost of care provided or increase bed capacity;

(f) the construction, development, or other establishment of a health care facility which is being replaced or which did not previously exist, by any person, including another type of health care facility;

(g) the expansion of the geographical service area of a home health agency;

(h) the use of hospital beds to provide services to patients or residents needing only skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as those levels of care are defined in 50-5-101; or

(i) the provision by a hospital of services for ambulatory surgical care, home health care, long-term care, inpatient mental health care, inpatient chemical dependency treatment, inpatient rehabilitation, or personal care.

(2) For purposes of subsection (1)(b), a change in bed capacity occurs on the date new or relocated beds are licensed pursuant to part 2 of this chapter and the date a final decision is made to grant a certificate of need for new or relocated beds, unless the certificate of need expires pursuant to 50-5-305.

(3) For purposes of this part, the following definitions apply:

(a) "Health care facility" or "facility" means a nonfederal ambulatory surgical facility, home health agency, long-term care facility, medical assistance facility, mental health center with inpatient services, inpatient chemical dependency facility, rehabilitation facility with inpatient services, residential treatment facility, or personal care facility. The term does not include:

(i) a hospital, except to the extent that a hospital is subject to certificate of need requirements pursuant to subsection (1)(i); or

(ii) an office of a private physician, dentist, or other physical or mental health care professionals, including chemical dependency counselors.

(b) (i) "Long-term care facility" means an entity which provides skilled nursing care, intermediate nursing care, or intermediate developmental disability care, as defined in 50-5-101, to a total of two or more persons.

(ii) The term does not include adult foster care, licensed under 52-3-303; community homes for the developmentally disabled, licensed under 53-20-305; community homes for persons with severe disabilities, licensed under 52-4-203; boarding or foster homes for children, licensed under 41-3-1142; hotels, motels, boardinghouses, roominghouses, or similar accommodations providing for transients, students, or persons not requiring institutional health care; or juvenile and adult correctional facilities operating under the authority of the department of corrections and human services.

(c) "Obligation for capital expenditure" does not include the authorization of bond sales or the offering or sale of bonds pursuant to the state long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1.

(d) "Personal care facility" means an entity which provides services and care which do not require nursing skills to more than four persons who are not related to the owner or administrator by blood or marriage and who need some assistance in performing the activities of everyday living. The term does not include those entities excluded from the definition of "long-term care facility" in subsection (3)(b).

(4) Expenditure thresholds for certificate of need review are established as follows:

(a) For acquisition of equipment and the construction of any building necessary to house the equipment, the expenditure threshold is $750,000.

(b) For construction of health care facilities, the expenditure threshold is $1,500,000.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(1); amd. Sec. 3, Ch. 37, L. 1979; amd. Sec. 12, Ch. 347, L. 1979; amd. Sec. 2, Ch. 329, L. 1983; amd. Sec. 2, Ch. 140, L. 1985; amd. Sec. 3, Ch. 450, L. 1987; amd. Sec. 2, Ch. 477, L. 1987; amd. Sec. 14, Ch. 330, L. 1989; amd. Sec. 1, Ch. 377, L. 1989; amd. Sec. 1, Ch. 244, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 764, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: Chapter 244 inserted (3)(a)(ii) to exclude offices of private physicians, dentists, or other health care professionals from definition of health care facility.

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 764 in (3)(a), in definition of health care facility or facility, inserted "residential treatment facility". Amendment effective July 1, 1991.

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Cross-References

County power to erect and manage hospitals and nursing homes, to lease property for hospital purposes, and to erect and operate a joint county hospital or nursing home with another county, 7-8-2102; Title 7, ch. 34, part 22; 7-34-2301; Title 7, ch. 34, part 25.

Municipal power to establish detention hospital to prevent spread of disease, 7-34-4101.

50-5-302. Letter of intent — application and review process. (1) The department may adopt rules including but not limited to rules for:

(a) the form and content of letters of intent and applications;

(b) the scheduling and consolidation of reviews;

(c) the abbreviated review of a proposal that:

(i) does not significantly affect the cost or use of health care;

(ii) is necessary to eliminate or prevent imminent safety hazards or to repair or replace a facility damaged or destroyed as a result of fire, storm, civil disturbance, or any act of God;

(iii) is necessary to comply with licensure or certification standards; or

(iv) would add a health service that is subject to a certificate of need review under 50-5-301(1)(c);

(d) the format of public informational hearings and reconsideration hearings;

(e) the establishment of batching periods for certificate of need applications for new beds and major medical equipment, challenge periods, and the circumstances under which applications from different batches may be comparatively reviewed; and

(f) the circumstances under which a certificate of need may be approved for the use of hospital beds to provide skilled nursing care, intermediate nursing care, or intermediate developmental disability care to patients or residents needing only that level of care.

(2) At least 30 days before any person or persons acquire or enter into a contract to acquire 50% or more of an existing health care facility, they shall submit to the department a letter noting intent to acquire the facility and of the services to be offered in the facility and its bed capacity.

(3) Any person intending to initiate an activity for which a certificate of need is required shall submit a letter of intent to the department.

(4) If the proposal is for new beds or major medical equipment, the department shall place the letter of intent in the appropriate batch unless, in the case of beds, the proposal is determined to be exempt from review.

(5) Any person who desires comparative review with a proposal in a batch must submit a challenge letter of intent at least by the end of the challenge period following the batching period for that batch.

(6) The department shall give to each person submitting a letter of intent written notice of the deadline for submission of an application for certificate of need, which will be no less than 30 days after the notice is sent.

(7) Within 20 working days after receipt of an application, the department shall determine whether it is complete and, if the application is found incomplete, shall send a written request to the applicant for the necessary additional information. Upon receipt of the additional information from the applicant, the department shall have 15 working days to determine if the application is complete and to send a notice to the applicant that the application is complete or incomplete. The request for added information may be repeated as long as the information submitted remains incomplete, and the department shall have 15 working days after each submission to send a notice that the application is complete or incomplete.

(8) If a proposal is to undergo comparative review with another proposal but the applicant fails to submit the necessary additional information requested by the department by the deadline prescribed by department rules, the application must be dropped from the current batch and assigned to the next batching period.

(9) If the department fails to send the notices within the periods prescribed in subsection (7), the application is considered to be complete on the last day of the time period during which the notice should have been sent.

(10) After an application is designated complete, immediate notification must be sent to the applicant and all other affected persons regarding the department's projected time schedule for review of the application. The review period for an application may be no longer than 90 calendar days after the notice is sent or, if a challenging application has been submitted as provided in subsection (5), within 90 days after the notice has been sent for all such

challenging applications. A longer period is permitted with the consent of all affected applicants.

(11) During the review period a public hearing may be held if requested by an affected person or when considered appropriate by the department.

(12) Each completed application may be considered in relation to other applications pertaining to similar types of facilities or equipment affecting the same health service area.

(13) The department shall, after considering all comments received during the review period, issue a certificate of need, with or without conditions, or deny the application. The department shall notify the applicant and affected persons of its decision within 5 working days after expiration of the review period.

(14) If the department fails to reach a decision and notify the applicant of its decision within the deadlines established in this section and if that delay constitutes an abuse of the department's discretion, the applicant may apply to district court for a writ of mandamus to force the department to render a decision.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 13, Ch. 347, L. 1979; amd. Sec. 3, Ch. 329, L. 1983; amd. Sec. 1, Ch. 26, L. 1985; amd. Sec. 3, Ch. 140, L. 1985; amd. Sec. 3, Ch. 477, L. 1987.

Compiler's Comments

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-5-303. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part).

50-5-304. Review criteria, required findings, and standards. The department shall by rule promulgate and utilize, as appropriate, specific criteria for reviewing certificate of need applications under this chapter, including but not limited to the following considerations and required findings:

(1) the degree to which the proposal being reviewed is consistent with the current state health plan;

(2) the need that the population served or to be served by the proposal has for the services;

(3) the availability of less costly quality-equivalent or more effective alternative methods of providing such services;

(4) the immediate and long-term financial feasibility of the proposal as well as the probable impact of the proposal on the costs of and charges for providing health services by the person proposing the health service;

(5) the relationship and financial impact of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided;

(6) the consistency of the proposal with joint planning efforts by health care providers in the area;

(7) the availability of resources, including health manpower, management personnel, and funds for capital and operating needs, for the provision of services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services;

(8) the relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services;

(9) in the case of a construction project, the costs and methods of the proposed construction, including the costs and methods of energy provision, and the probable impact of the construction project reviewed on the costs of providing health services by the person proposing the construction project; and

(10) the distance, convenience, cost of transportation, and accessibility of health services for persons who live outside urban areas in relation to the proposal.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(3), (4); amd. Sec. 14, Ch. 347, L. 1979; amd. Sec. 4, Ch. 329, L. 1983; amd. Sec. 4, Ch. 477, L. 1987.

Compiler's Comments

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

Medical assistance — Medicaid, Title 53, ch. 6, part 1.

50-5-305. Period of validity of approved application. (1) Unless an extension is granted pursuant to subsection (3), a certificate of need shall expire:

(a) 1 year after the decision to issue it is final if the applicant has not commenced construction on a project requiring construction or has not incurred an enforceable capital expenditure commitment for a project not requiring construction;

(b) 1 year after the date the project is commenced plus the estimated period of time for completion shown in the application if the approved project is not complete; or

(c) when the department determines, after opportunity for a hearing, that the holder of the certificate of need has violated the provisions of this chapter, rules adopted hereunder, or the terms of the certificate of need.

(2) For purposes of subsection (1)(a), if a reconsideration hearing is granted or an appeal filed under 50-5-306, the final decision will be that following the hearing or resolving the appeal.

(3) The holder of an unexpired certificate of need may apply to the department to extend the term of the certificate of need for one additional period not to exceed 6 months. The department may grant such an extension upon the applicant's demonstrating good cause as defined by department rule.

(4) The holder of an unexpired certificate of need shall report to the department in writing on the status of his project at the end of each 6-month period after being granted a certificate of need until completion of the project for which the certificate of need was issued.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(5); amd. Sec. 15, Ch. 347, L. 1979; amd. Sec. 5, Ch. 329, L. 1983; amd. Sec. 5, Ch. 477, L. 1987.

Compiler's Comments

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

50-5-306. Right to hearing and appeal. (1) An affected person may request the department to hold a public hearing and to reconsider its decision. The department shall grant the request if the affected person submits the request in writing and if the request is received by the department within 30 calendar days after the initial decision is announced.

(2) The public hearing to reconsider must be held within 30 calendar days after the request is received unless the requestor agrees to waive the time limit.

(3) The reconsideration hearing must be conducted pursuant to the provisions for informal proceedings of the Montana Administrative Procedure Act.

(4) The department shall make its final decision and serve the appellant with written findings of fact and conclusions of law in support of the decision within 30 days after the conclusion of the reconsideration hearing.

(5) Any affected person may appeal the department's final decision to the district court as provided in Title 2, chapter 4, part 7.

(6) If a petition to appeal the decision is filed, the decision must be stayed pending resolution of the appeal by the courts.

(7) The department may by rule prescribe in greater detail the hearing and appellate procedures.

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(6); amd. Sec. 16, Ch. 347, L. 1979; amd. Sec. 6, Ch. 329, L. 1983; amd. Sec. 2, Ch. 26, L. 1985; amd. Sec. 6, Ch. 477, L. 1987.

Compiler's Comments

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-5-307. Civil penalty — injunction. (1) A person who violates the terms of 50-5-301 is subject to a civil penalty of not less than $1,000 or more than $10,000. Each day of violation constitutes a separate offense. The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty shall be deposited in the state general fund.

(2) The department or, upon request of the department, the county attorney of the county where the health care facility in question is located may bring an action to enjoin a violation of 50-5-301, in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 170, Ch. 197, L. 1967; amd. Sec. 21, Ch. 366, L. 1969; amd. Sec. 2, Ch. 447, L. 1975; R.C.M. 1947, 69-5212(part); amd. Sec. 17, Ch. 347, L. 1979.

Compiler's Comments

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Cross-References

Duty of County Attorney in state matters, 7-4-2716.

Injunctive relief provided, Title 27, ch. 19.

50-5-308. Special circumstances. The department shall issue a certificate of need for a proposed capital expenditure if:

(1) the capital expenditure is required to eliminate or prevent imminent safety hazards as defined by federal, state, or local fire, building, or life safety codes or regulations or to comply with state licensure, certification, or accreditation standards; and

(2) the department has determined that the facility or service for which the capital expenditure is proposed is needed and that the obligation of the capital expenditure is consistent with the state health plan.

History: En. Sec. 18, Ch. 347, L. 1979; amd. Sec. 7, Ch. 329, L. 1983.

Compiler's Comments

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

Fire protection equipment, Title 50, ch. 39.

Building construction standards, Title 50, ch. 60.

50-5-309. Exemptions from certificate of need review. A project proposed by an agency of state government that has been approved by the legislature pursuant to the long-range building program under Title 17, chapter 5, part 4, and Title 18, chapter 2, part 1, is exempt from certificate of need review.

History: En. Sec. 9, Ch. 329, L. 1983; amd. Sec. 7, Ch. 477, L. 1987.

Compiler's Comments

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

50-5-310. Fees. (1) There is no fee for filing a letter of intent.

(2) An application for certificate of need approval must be accompanied by a fee equaling 0.3% of the capital expenditure projected in the application, except that the fee may be no less than $500.

(3) With the exception of the department and an applicant whose proposal is approved and who does not request the hearing, each affected person who is a party in a reconsideration hearing held pursuant to 50-5-306(1) shall pay the department $500.

(4) Fees collected under this section must be deposited in the state general fund.

History: En. Sec. 8, Ch. 477, L. 1987.

Compiler's Comments

Termination Provisions Repealed — Effective Date: (1) Section 1, Ch. 184, L. 1991, repealed sec. 3, Ch. 377, L. 1989, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-310, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1991.

(2) Section 1, Ch. 184, L. 1991, repealed sec. 9, Ch. 477, L. 1987, which terminated 50-5-301, 50-5-302, 50-5-304 through 50-5-309, and sec. 13, Ch. 329, L. 1983, and amended 50-5-101 and 50-5-106, effective July 1, 1989.

(3) Section 1, Ch. 184, L. 1991, repealed sec. 13, Ch. 329, L. 1983, which terminated 50-5-301, 50-5-302, and 50-5-304 through 50-5-309, and amended 50-5-101 and 50-5-106, effective July 1, 1987.

(4) Section 1, Ch. 184, L. 1991, became effective July 1, 1991.

50-5-311 through 50-5-315 reserved.

50-5-316. Certificate of need for residential treatment facility. A person may not operate a residential treatment facility unless he has obtained a certificate of need issued by the department as provided under this part.

History: En. Sec. 3, Ch. 616, L. 1989.

50-5-317. Repealed. Sec. 4, Ch. 764, L. 1991.

History: En. Sec. 4, Ch. 616, L. 1989.

Part 4

State Plans and Programs — Federal Aid

Part Cross-References

Creation of public hospital districts and funding for county facilities, Title 7, ch. 34, parts 21 and 24.

50-5-401. Repealed. Sec. 27, Ch. 347, L. 1979.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2) thru (7)En. Sec. 180, Ch. 197, L. 1967; amd. Sec. 76, Ch. 349, L. 1974; Sec. 69-5301, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-5301.

50-5-402. Administration of state medical facility plan. The department is the principal state agency for establishing and administering a statewide plan for construction, modernization, alteration, equipment, maintenance, or operation of a health care facility for provision of care, treatment, diagnosis, rehabilitation, training, or related service. This plan is to be known as the state medical facility plan.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 19, Ch. 347, L. 1979.

Cross-References

Adult foster family care homes, Title 52, ch. 3, part 3.

Medical aid, hospitalization, institutionalization of the indigent, 53-3-206, 53-3-209, 53-3-310, 53-3-313.

Medical assistance, Medicaid, renal disease treatment, Montana State Hospital, Title 53, ch. 6.

Treatment, community-based services, community homes, protective services, and state-owned facilities for the developmentally disabled, Title 53, ch. 20.

Community mental health centers, Montana State Hospital, community-based nursing homes, Center for the Aged, Title 53, ch. 21.

50-5-403. State plan. The state plan shall specify relative need for the projects included in the construction program in accordance with regulations prescribed under federal acts and provide for the construction, maintenance, and operation in the order of relative need determined by the department.

History: En. Sec. 187, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5308.

50-5-404. Duties of department. The department shall:

(1) prescribe minimum standards for the maintenance and operation of health care facilities receiving federal aid for construction under the state plan;

(2) inventory existing hospital, medical, and related health care facilities;

(3) survey the need for construction or alteration of health care facilities;

(4) develop and administer a state plan for the construction and alteration of public and other nonprofit health care facilities;

(5) if desirable, enter into agreements for the utilization of facilities and services of other departments, agencies, and institutions, public or private;

(6) accept and deposit with the state treasurer and spend any grant made to meet costs of carrying out 50-5-402 through 50-5-411;

(7) prepare and review a construction program in accordance with federal requirements that will provide adequate health care facilities to people in the state providing, as far as possible, for distribution throughout the state to make all types of services reasonably available to all persons;

(8) submit to federal agencies state plans, including those for the health care facilities construction program and modifications of it providing for the establishment and operation of health care facilities construction activities in accordance with federal requirements;

(9) make application to the appropriate federal agency for funds to assist in carrying out the survey and planning activities;

(10) after approval of a plan by the appropriate federal agency, publish a description in newspapers having general circulation throughout the state and make the plan available upon request to all persons or organizations;

(11) inspect construction or alteration projects approved by the appropriate federal agency and, if satisfactory, certify that work has been performed on the project or purchases made in accordance with approved plans and specifications and that payment of federal funds is due to the applicant;

(12) require reports and make inspections and investigations as necessary or required by the federal agency;

(13) contract with consultants for services which are performed on a part-time or fee-for-service basis not involving administrative duties.

History: En. Secs. 182, 183, 184, 186, Ch. 197, L. 1967; amd. Secs. 78, 79, 80, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5303, 69-5304, 69-5305(part), 69-5307; amd. Sec. 20, Ch. 347, L. 1979.

Cross-References

State Treasurer, 2-15-1002.

Public contracts generally, Title 18, ch. 1.

50-5-405. Contracts with federal agencies. The department may enter into contracts and agreements with agencies of the federal government to secure the benefit of federal programs to provide adequate health care facilities and services.

History: En. Sec. 181, Ch. 197, L. 1967; amd. Sec. 77, Ch. 349, L. 1974; R.C.M. 1947, 69-5302(part); amd. Sec. 21, Ch. 347, L. 1979.

Cross-References

Public contracts generally, Title 18, ch. 1.

50-5-406. Federal funds. (1) The department may accept federal funds.

(2) All federal funds received shall be deposited in the state treasury and used only for the purposes specified by law. Money which is not spent for those purposes shall be repaid to the federal government.

(3) The department shall transmit federal funds to applicants for work performed or purchases made in carrying out approved projects. Claims for all payments shall be approved by the department.

History: En. Secs. 184, 190, Ch. 197, L. 1967; amd. Secs. 79, 107, 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5305(part), 69-5311.

Cross-References

Fund structure, Title 17, ch. 2.

50-5-407. Publicity as to plans and hearing. Before submitting plans to a federal agency, the department shall give adequate publicity including a general description of the plans and may hold a public hearing at which all persons or organizations may express their views.

History: En. Sec. 185, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5306.

50-5-408. Applications for construction projects. Applications for health care facilities construction projects may be submitted by a state agency, a political subdivision, or by any public or nonprofit agency authorized to construct and operate a health care facility.

History: En. Sec. 188, Ch. 197, L. 1967; R.C.M. 1947, 69-5309; amd. Sec. 22, Ch. 347, L. 1979.

50-5-409. Hearing on denial of application. If an application is denied, the applicant shall have an opportunity for a fair hearing.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-5-410. Forwarding of application. If the department, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that an application complies with state and federal requirements and conforms to the state plan, the department shall forward the application to the appropriate federal agency.

History: En. Sec. 189, Ch. 197, L. 1967; amd. Secs. 107 and 111, Ch. 349, L. 1974; R.C.M. 1947, 69-5310(part).

50-5-411. Consolidated applications. (1) Boards of county commissioners of two or more counties may submit a consolidated application for a single health care facility or health center serving each of the counties included in the application.

(2) Any statutes investing counties with powers to construct, maintain, and operate health care facilities directly or by lease or contract may be utilized for this joint action.

(3) All statutes governing submission of questions of establishing a health care facility, health care facility construction, issuance of bonds, or method of

operation and requiring a majority vote of taxpayers on the questions shall apply.

(4) Concurrent and joint action of two or more counties and approval by a majority of the voters in each county is required to authorize the issuance of bonds, construction, and contracts under a consolidated plan.

History: En. Sec. 191, Ch. 197, L. 1967; R.C.M. 1947, 69-5312; amd. Sec. 23, Ch. 347, L. 1979.

Cross-References

Local government interlocal agreements, Title 7, ch. 11, part 1.

50-5-412. Repealed. Sec. 27, Ch. 347, L. 1979.

History: En. Sec. 192, Ch. 197, L. 1967; R.C.M. 1947, 69-5313.

50-5-413 through 50-5-420 reserved.

50-5-421 through 50-5-424. Repealed. Sec. 156, Ch. 370, L. 1987.

Compiler's Comments

Histories of Repealed Sections: 50-5-421 through 50-5-424. En. Secs. 1 through 4, Ch. 668, L. 1983.

Part 5

Right to Refuse Participation in Sterilization

50-5-501. Definitions. As used in this part:

(1) "sterilization" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to eliminate an individual's reproductive capacity;

(2) "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 69-5222 by Sec. 1, Ch. 247, L. 1974; R.C.M. 1947, 69-5222.

50-5-502. Refusal by hospital or health care facility to participate in sterilization. (1) No private hospital or health care facility shall be required, contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of such hospital or facility as stated by its governing body or board, to admit any person for the purpose of sterilization or to permit the use of its facilities for such purpose.

(2) Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(1).

Cross-References
Liability, Title 27, ch. 1, part 7.

50-5-503. Refusal by individual to participate in sterilization. (1) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in sterilization because of religious beliefs or moral convictions.

(2) If requested by any hospital or health care facility or person desiring sterilization, such refusal shall be in writing signed by the person refusing but may refer generally to the grounds of "religious beliefs and moral convictions".

(3) The refusal of any person to advise concerning, perform, assist, or participate in sterilization shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(2).

Cross-References
Freedom of religion, Art. II, sec. 5, Mont. Const.
Liability, Title 27, ch. 1, part 7.

50-5-504. Unlawful to interfere with right of refusal. (1) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this part, whether by duress, coercion, or any other means.

(2) The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(3).

Cross-References
Injunctions, Title 27, ch. 19.
Termination of employment, Title 39, ch. 2, part 5.

50-5-505. Refusal not grounds for loss of privileges, immunities, or public benefits. Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

History: En. 69-5223 by Sec. 2, Ch. 247, L. 1974; R.C.M. 1947, 69-5223(4).

Part 6

Family Practice Residency Training

Part Cross-References
Western Regional Higher Education Compact, Title 20, ch. 25, part 8.
Licensing of physicians, Title 37, ch. 3.

50-5-601. Short title. This part may be cited as the "Family Practice Training Act of 1985".

History: **En. Sec. 1, Ch. 649, L. 1985.**

50-5-602. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(2) "Family practice" means comprehensive medical care with particular emphasis on the family unit, in which the physician's continuing responsibility for health care is not limited by the patient's age or sex or by a particular organ system or disease entity.

(3) "Residency training" means a community-based family practice program to train family practice resident physicians, sponsored by one or more community hospitals and physicians in Montana, for inpatient and outpatient training.

(4) "Resident physician" means any physician in advanced medical specialty training.

History: **En. Sec. 2, Ch. 649, L. 1985.**

50-5-603. Montana family practice training program. (1) There is created a Montana family practice training program to train resident physicians in family practice.

(2) The program is under the authority of the department, and the department shall contract with a nonprofit corporation organized under the laws of Montana or certified to do business in Montana, to coordinate the training of family practice resident physicians. The officers and directors of the corporation must be qualified by education, experience, and interest to administer and oversee family practice resident physician training activity.

(3) No resident physician may train more than 2 months in any one community in any 12-month period.

History: **En. Sec. 3, Ch. 649, L. 1985.**

50-5-604 through 50-5-610 reserved.

50-5-611. Funding limitations. (1) Money appropriated for residency training is in addition to any other money appropriated for medical educational programs and may not supplant funds for existing medical educational programs.

(2) No funds appropriated by the legislature to fund residency training may subsidize the cost incurred by patients.

History: **En. Sec. 4, Ch. 649, L. 1985.**

Parts 7 through 10 reserved

Part 11

Long-Term Health Care Facilities

50-5-1101. Short title. This part may be cited as the "Montana Long-Term Care Residents' Bill of Rights".

History: En. Sec. 1, Ch. 582, L. 1987.

50-5-1102. Findings and purpose. (1) The legislature finds and declares that many residents of long-term care facilities are isolated from the community and lack the means to assert their rights.

(2) The purpose of this part is to:

(a) establish and recognize the fundamental civil and human rights to which residents of long-term care facilities are entitled; and

(b) provide for the education of residents and staff regarding these rights.

History: En. Sec. 2, Ch. 582, L. 1987.

50-5-1103. Definitions. In this part the following definitions apply:

(1) "Administrator" means a person who is licensed as a nursing home administrator under Title 37, chapter 9, and who administers, manages, or supervises a long-term care facility.

(2) "Authorized representative" means:

(a) a person holding a general power of attorney for a resident;

(b) a person appointed by a court to manage the personal or financial affairs of a resident;

(c) a representative payee;

(d) a resident's next of kin; or

(e) a sponsoring agency.

(3) "Department" means the department of health and environmental sciences.

(4) "Facility" or "long-term care facility" means a facility or part thereof licensed under Title 50, chapter 5, to provide skilled nursing care, intermediate nursing care, or personal care.

(5) "Long-term care ombudsman" means the individual appointed to fulfill the requirement of 42 U.S.C. 3027(a)(12) that the state provide an advocate for residents of long-term care facilities.

(6) "Resident" means a person who lives in a long-term care facility.

History: En. Sec. 3, Ch. 582, L. 1987.

50-5-1104. Rights of long-term care facility residents. (1) The state adopts by reference for all long-term care facilities the rights for long-term care facility residents applied by the federal government to facilities that provide skilled nursing care or intermediate nursing care and participate in a medicaid or medicare program (42 U.S.C. 1395x(j) and 1396d(c), as implemented by regulation).

(2) In addition to the rights adopted under subsection (1), the state adopts for all residents of long-term care facilities the following rights:

(a) A resident or his authorized representative must be informed by the facility at least 30 days in advance of any changes in the cost or availability of services, unless to do so is beyond the facility's control.

(b) Regardless of the source of payment, each resident or his authorized representative is entitled, upon request, to receive and examine an explanation of his monthly bill.

(c) Residents have the right to organize, maintain, and participate in resident advisory councils. The facility shall afford reasonable privacy and facility space for the meetings of the councils.

(d) A resident has the right to present a grievance on his own behalf or that of others to the facility or the resident advisory council. The facility shall establish written procedures for receiving, handling, and informing residents or the resident advisory council of the outcome of any grievance presented.

(e) A resident has the right to ask a state agency or a resident advocate for assistance in resolving grievances, free from restraint, interference, or reprisal.

(f) During his stay in a long-term care facility, a resident retains the prerogative to exercise decisionmaking rights in all aspects of his health care, including placement and treatment issues such as medication, special diets, or other medical regimens.

(g) The resident's authorized representative must be notified in a prompt manner of any significant accident, unexplained absence, or significant change in the resident's health status.

(h) A resident has the right to be free from verbal, mental, and physical abuse, neglect, or financial exploitation. Facility staff shall report to the department and the long-term care ombudsman any suspected incidents of abuse under the Montana Elder and Developmentally Disabled Abuse Prevention Act, Title 52, chapter 3, part 8.

(i) Each resident has the right to privacy in his room or portion of the room. If a resident is seeking privacy in his room, staff members should make reasonable efforts to make their presence known when entering the room.

(j) In case of involuntary transfer or discharge, a resident has the right to reasonable advance notice to ensure an orderly transfer or discharge. Reasonable advance notice requires at least 21 days' written notification of any interfacility transfer or discharge except in cases of emergency or for medical reasons documented in the resident's medical record by the attending physician.

(k) If clothing is provided to the resident by the facility, it must be of reasonable fit.

(l) A resident has the right to reasonable safeguards for his personal possessions brought to the facility. The facility shall provide a means for safeguarding the resident's small items of value in his room or in another part of the facility where he must have reasonable access to the items.

(m) The resident has the right to have all losses or thefts of personal possessions promptly investigated by the facility. The results of the investigation must be reported to the affected resident.

(3) The administrator of the facility shall adopt whatever additional measures are necessary to implement the residents' rights listed in subsec-

tions (1) and (2) and meet any other requirements relating to residents' health and safety that are conditions of participation in a state or federal program of medical assistance.

History: En. Sec. 4, Ch. 582, L. 1987; amd. Sec. 43, Ch. 16, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(h) inserted "and Developmentally Disabled"; and made minor change in style.

50-5-1105. Long-term care facility to adopt and post residents' rights. (1) The administrator of each long-term care facility shall:

(a) adopt a written statement of rights applicable to all residents of its facility, including as a minimum the rights listed in 50-5-1104;

(b) provide each resident, at the time of his admission to the facility, a copy of the facility's statement of residents' rights, receipt of which the resident or his authorized representative shall acknowledge in writing;

(c) provide each resident with a written statement of any change in residents' rights at the time the change is implemented, receipt of which the resident or his authorized representative shall acknowledge in writing; and

(d) train and involve staff members in the implementation of residents' rights as expressed in the statement adopted by the facility.

(2) Each staff member shall affirm in writing that he has read and understands the facility's statement of residents' rights.

(3) The administrator of the facility shall post in a conspicuous place visible to the public a copy of the facility's statement of residents' rights, presented in a format that can be read easily by the residents and by the public.

History: En. Sec. 5, Ch. 582, L. 1987.

50-5-1106. Resident's rights devolve to authorized representative. The rights and responsibilities listed in 50-5-1104 and 50-5-1105 devolve to the resident's authorized representative when the resident:

(1) exhibits a communication barrier;

(2) has been found by his physician to be medically incapable of understanding these rights; or

(3) has been adjudicated incompetent by a district court.

History: En. Sec. 6, Ch. 582, L. 1987.

50-5-1107. Enforcement of residents' rights. The requirements of 50-5-1104 through 50-5-1106 are included in the minimum standards considered by the department in reviewing applications for license, as provided in 50-5-204.

History: En. Sec. 7, Ch. 582, L. 1987.

CHAPTER 6

EMERGENCY MEDICAL SERVICES

Part 1 — Development of Program

50-6-101. Legislative purpose.
50-6-102. Department to establish and administer program.
50-6-103. Powers of department.
50-6-104. Interdepartmental cooperation required.

Part 2 — Emergency Medical Technicians

50-6-201. Legislative findings.
50-6-202. Definitions.
50-6-203. Rules.
50-6-204. Repealed.
50-6-205. Repealed.
50-6-206. Consent.
50-6-207. Construction.

Part 3 — Ambulance Service Licensing

50-6-301. Findings.
50-6-302. Definitions.
50-6-303. Repealed.
50-6-304. Cooperative agreements — gifts, grants, and donations.
50-6-305. Repealed.
50-6-306. License required.
50-6-307. License fee.
50-6-308. Cancellation of license.
50-6-309. Repealed.
50-6-310. Notice and hearing required.
50-6-311. Return of license for destruction or deletion.
50-6-312. Repealed.
50-6-313. Inspections.
50-6-314. Authority of board or department to compel and take testimony.
50-6-315. County attorney to prosecute violations.
50-6-316. Criminal and civil penalties.
50-6-317. Liability protection.
50-6-318 through 50-6-322 reserved.
50-6-323. Powers and duties of department.
50-6-324. Advisory committee.
50-6-325. Waiver of licensing requirements.
50-6-326. Injunction to require compliance.
50-6-327. Administrative enforcement.

Chapter Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

Validity of consent for medical treatment, Title 41, ch. 1, part 4.

Part 1

Development of Program

50-6-101. Legislative purpose. The public welfare requires the providing of assistance and encouragement for the development of a comprehensive emergency medical services program for Montanans who each year are dying and suffering permanent disabilities needlessly because of inadequate emergency medical services. The repeated loss of persons who die unnecessarily because necessary life-support personnel and equipment are not available to victims of accidents and sudden illness is a tragedy that can and must be eliminated. The development of an emergency medical services program is in the interest of the social well-being and health and safety of the state and all its people.

History: En. 69-7001 by Sec. 1, Ch. 311, L. 1974; R.C.M. 1947, 69-7001.

50-6-102. Department to establish and administer program. The department of health and environmental sciences shall establish and administer an emergency medical services program.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part).

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

50-6-103. Powers of department. (1) The department of health and environmental sciences is authorized to confer and cooperate with any and all other persons, organizations, and governmental agencies that have an interest in emergency medical services problems and needs.

(2) The department is authorized to accept, receive, expend, and administer any and all funds which are now available or which may be donated, granted, or appropriated to the department.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part).

50-6-104. Interdepartmental cooperation required. The department of health and environmental sciences, the department of justice, and other interested departments or divisions shall develop in writing a mutually agreeable plan of cooperation so that governmental effort will not be duplicated and governmental resources will be applied on a reasonable priority basis.

History: En. 69-7002 by Sec. 2, Ch. 311, L. 1974; amd. Sec. 38, Ch. 213, L. 1975; R.C.M. 1947, 69-7002(part); amd. Sec. 8, Ch. 274, L. 1981.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

Part 2

Emergency Medical Technicians

Part Cross-References

Workers' compensation — regulation of fees, 39-71-704.

Report of fetal death that occurs outside licensed medical facility, 46-4-114.

50-6-201. Legislative findings. The legislature finds and declares that prompt and efficient emergency medical care of the sick and injured at the scene and during transport to a health care facility is an important ingredient necessary for reduction of the mortality and morbidity rate during the first critical minutes immediately after an accident or the onset of an emergent condition and that a program for emergency medical technicians is required in order to provide the safest and most efficient delivery of emergency care.

History: En. 69-7003 by Sec. 1, Ch. 84, L. 1975; R.C.M. 1947, 69-7003.

50-6-202. Definitions. As used in this part, the following definitions apply:

(1) "Emergency medical technician" means a person who has been specially trained in emergency care in a training program approved by the state board of medical examiners and certified by the board as having demonstrated a level of competence suitable to treat victims of injury or other emergent condition.

(2) "Board" means the board of medical examiners, department of commerce.

History: En. 69-7004 by Sec. 2, Ch. 84, L. 1975; R.C.M. 1947, 69-7004; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 1, Ch. 377, L. 1991.

Compiler's Comments

1991 Amendment: In definition of emergency medical technician, after "technician", deleted "basic" and after "means" substituted "a person" for "personnel of volunteer or nonvolunteer police, fire, rescue, ambulance, or emergency services"; deleted definition of emergency medical technician—advanced; and made minor changes in style.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-6-203. Rules. (1) The board, after consultation with the department of health and environmental sciences, the department of justice, and other appropriate departments, associations, and organizations, shall adopt rules of the board implementing this part, including but not limited to training and certification of emergency medical technicians and administration of drugs.

(2) The board may, by rule, establish various levels of emergency medical technician certification and shall specify for each level the training requirements, acts allowed, recertification requirements, and any other requirements regarding the training, performance, or certification of that level of emergency medical technician that it considers necessary or desirable.

History: En. 69-7008 by Sec. 6, Ch. 84, L. 1975; R.C.M. 1947, 69-7008; amd. Sec. 8, Ch. 274, L. 1981; amd. Sec. 2, Ch. 377, L. 1991.

Compiler's Comments

1991 Amendment: Near end of (1), after "certification of" substituted "emergency medical technicians and" for "personnel" and at end, after "drugs", deleted "and other acts as allowed herein"; and inserted (2) authorizing

Board to adopt rules establishing levels of certification and training and certification requirements. Amendment effective April 6, 1991.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Department of Justice, Title 2, ch. 15, part 20.

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

50-6-204. Repealed. Sec. 4, Ch. 377, L. 1991.

History: En. 69-7005 by Sec. 3, Ch. 84, L. 1975; R.C.M. 1947, 69-7005.

50-6-205. Repealed. Sec. 4, Ch. 377, L. 1991.

History: En. 69-7006, 69-7007 by Secs. 4, 5, Ch. 84, L. 1975; R.C.M. 1947, 69-7006, 69-7007.

50-6-206. Consent. No emergency medical technician may be subject to civil liability for failure to obtain consent in performing acts as authorized herein to any individual regardless of age where the patient is unable to give consent and there is no other person present legally authorized to consent, provided that such acts are in good faith and without knowledge of facts negating consent.

History: En. 69-7009 by Sec. 7, Ch. 84, L. 1975; R.C.M. 1947, 69-7009.

Cross-References

Good Samaritan law, 27-1-714, 41-1-405.

50-6-207. Construction. Nothing in this part shall be construed to detract from the powers granted to the department of health and environmental sciences to regulate emergency medical services provided for in part 3 of this chapter.

History: En. 69-7010 by Sec. 8, Ch. 84, L. 1975; R.C.M. 1947, 69-7010; amd. Sec. 3, Ch. 377, L. 1991.

Compiler's Comments

1991 Amendment: After "regulate" substituted "emergency medical services" for "ambulance service as".

Part 3

Ambulance Service Licensing

Part Cross-References

Establishment of ambulance services by county, city, or town, Title 7, ch. 34, part 1.

Discrimination in licensing prohibited, 49-3-204.

50-6-301. Findings. The legislature finds and declares that:

(1) the public welfare requires the establishment of minimum uniform standards for the operation of emergency medical services;

(2) the control, inspection, and regulation of persons providing emergency medical services is necessary to prevent or eliminate improper care that may endanger the health of the public; and

(3) the regulation of emergency medical care services is in the interest of the social well-being and the health and safety of the state and all its people.

History: En. Sec. 1, Ch. 387, L. 1971; R.C.M. 1947, 69-3604; amd. Sec. 1, Ch. 387, L. 1989.

50-6-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aircraft" has the same meaning given in 67-1-101. The term includes any fixed-wing airplane or helicopter.

(2) "Ambulance" means a privately or publicly owned motor vehicle or aircraft that is maintained and used for the transportation of patients. The term does not include a motor vehicle or aircraft owned by or operated under the direct control of the United States. The term also does not include air transportation services, such as charter or fixed-based operators, regulated by the federal aviation administration, that offer no special medical services or provide only transportation to patients or persons at the direction or under the supervision of an independent physician.

(3) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(5) "Emergency medical service" means a prehospital or interhospital emergency medical transportation or treatment service provided by an ambulance or nontransporting medical unit.

(6) "Medical control" means the function of a licensed physician in providing direction, advice, or orders to an emergency medical service provider.

(7) "Nontransporting medical unit" means an aggregate of persons who are organized to respond to a call for emergency medical service and to treat a patient until the arrival of an ambulance. Nontransporting medical units provide any one of varying types and levels of service defined by department rule but may not transport patients.

(8) "Off-line medical director" means a physician who is responsible and accountable for the overall medical direction and medical supervision of an emergency medical service and who is responsible for the proper application of patient care techniques and the quality of care provided by the emergency medical services personnel. The term includes only a physician who volunteers his services as an off-line medical director or whose total reimbursement for those services in any 12-month period does not exceed $5,000.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States.

History: En. Sec. 2, Ch. 387, L. 1971; amd. Sec. 11, Ch. 349, L. 1974; amd. Sec. 1, Ch. 86, L. 1977; R.C.M. 1947, 69-3605; amd. Sec. 2, Ch. 387, L. 1989; amd. Sec. 1, Ch. 304, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definition of off-line medical director. Amendment effective April 1, 1991.

Cross-References

Local government law enforcement, Title 7, ch. 32.

Limits on liability for emergency care rendered at the scene of accident or emergency, 27-1-714.

50-6-303. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(1), (2).

50-6-304. Cooperative agreements — gifts, grants, and donations. (1) The department may enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this part.

(2) The department may accept and administer any gift, grant, or donation of funds to carry out the purposes of this part.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(3); amd. Sec. 4, Ch. 387, L. 1989.

50-6-305. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 6, Ch. 387, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-3609(4).

50-6-306. License required. (1) A person may not conduct or operate an emergency medical service without first obtaining a license from the department. A separate license is required for each type and level of service.

(2) Applications for a license must be made in writing to the department on forms specified by the department.

(3) Each license must be issued for a specific term not to exceed 2 years. Renewal may be obtained by paying the required license fee and demonstrating compliance with department rules.

(4) The license is not transferable.

History: En. Secs. 3, 4, Ch. 387, L. 1971; R.C.M. 1947, 69-3606, 69-3607(2); amd. Sec. 5, Ch. 387, L. 1989.

50-6-307. License fee. (1) There must be paid to the department, with each application for a license or for renewal of a license, a license fee of $35.

(2) The department shall deposit fees with the state treasurer to the credit of the state general fund.

(3) Payment of the license fee stipulated in this part must be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this part.

History: En. Secs. 4, 10, Ch. 387, L. 1971; R.C.M. 1947, 69-3607(1), 69-3613; amd. Sec. 1, Ch. 592, L. 1983; amd. Sec. 6, Ch. 387, L. 1989.

Cross-References

Fund structure, Title 17, ch. 2.

50-6-308. Cancellation of license. The department may cancel a license if it finds that the licensee has:

(1) violated any provision of this part or any rule of the department or order of the department or board; and

(2) failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part); amd. Sec. 7, Ch. 387, L. 1989.

50-6-309. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-310. Notice and hearing required. (1) The department may not deny or cancel a license without:

(a) delivery to the applicant or licensee of a written statement of the grounds for the denial or cancellation or the charge involved;

(b) an opportunity to answer at a hearing before the board to show cause, if any, why the license should not be denied or canceled.

(2) The licensee shall make written request to the board for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-6-311. Return of license for destruction or deletion. On cancellation of a license, the license certificate shall be returned to the department for destruction or deletion as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(3).

50-6-312. Repealed. Sec. 17, Ch. 387, L. 1989.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(part).

50-6-313. Inspections. (1) The department shall make necessary investigations and inspections for enforcement of this part.

(2) The department shall make regular inspections as the rules of the department may direct and special inspections which it considers necessary.

(3) The department has free access at all reasonable hours to the place of business of any person operating an emergency medical service in order to make necessary inspections. These inspections may include the inspection of any equipment or records pertaining to the activities of the emergency medical service.

(4) A person may not refuse entry or access to an authorized representative of the department who presents appropriate credentials and requests entry for the purpose of conducting an inspection necessitated under this section. A person may not obstruct, hamper, or interfere with an inspection that is properly conducted pursuant to this section.

(5) Upon request, the owner or operator of an emergency medical service must receive a report stating all facts that relate to his compliance with the provisions of this part as determined by the department, based upon its inspection.

History: En. Sec. 7, Ch. 387, L. 1971; amd. Sec. 13, Ch. 349, L. 1974; R.C.M. 1947, 69-3610; amd. Sec. 9, Ch. 387, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-6-314. Authority of board or department to compel and take testimony. In any proceeding under this part, the board or department may administer oaths, issue subpoenas, summon witnesses, and take testimony of any person within the state.

History: En. Sec. 8, Ch. 387, L. 1971; R.C.M. 1947, 69-3611; amd. Sec. 13, Ch. 387, L. 1989.

50-6-315. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person violating this part or any rule of the department or order issued by the department or board.

History: En. Sec. 5, Ch. 387, L. 1971; amd. Sec. 12, Ch. 349, L. 1974; R.C.M. 1947, 69-3608(4); amd. Sec. 14, Ch. 387, L. 1989.

Cross-References

Duty of County Attorney in state matters, 7-4-2716.

50-6-316. Criminal and civil penalties. (1) Any person violating any provision of this part or any rule of the department or order issued by the department or board shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense, not less than $75 or more than $200 for the second offense, and for third and subsequent offenses, not less than $200 or more than $500 or imprisoned in the county jail not to exceed 90 days.

(2) A person who violates any provision of this part or any rule of the department or order issued by the department or board is subject to a civil penalty not to exceed $1,000 for each violation. Each day of violation constitutes a separate violation.

(3) An action commenced under subsections (2) through (6) does not bar administrative enforcement of this part as provided in 50-6-327 or an injunction as provided in 50-6-326.

(4) If the department has reason to believe that a person has violated any provision of this part or any rule of the department or order issued by the department or board, it shall bring an action in the name of the state against such person to impose, assess, and recover the civil penalties as provided in subsection (2).

(5) Any civil penalty collected under subsections (2) through (6) is in lieu of the criminal penalty provided for in subsection (1).

(6) All penalties collected under subsections (2) through (5) must be transmitted to the state treasurer for deposit in the state general fund.

History: En. Sec. 9, Ch. 387, L. 1971; R.C.M. 1947, 69-3612; amd. Sec. 15, Ch. 387, L. 1989; (2) thru (6)En. Sec. 16, Ch. 387, L. 1989.

50-6-317. Liability protection. (1) A physician or registered nurse licensed under the laws of this state who gives instructions for medical care to a member of an emergency medical service without compensation or for compensation not exceeding $5,000 in any 12-month period and whose professional practice is not primarily in an emergency or trauma room or ward is not liable for civil damages for an injury resulting from the instructions, except damages for an injury resulting from the gross negligence of the physician or nurse, if the instructions given by the physician or nurse are:

(a) consistent with the protocols and the medical control plan approved by the department in licensing the emergency medical service; and

(b) consistent with the level of certification or licensure of the emergency medical services personnel instructed by the physician or nurse.

(2) An off-line medical director is not liable for civil damages for an injury resulting from the performance of his duties, except damages for an injury resulting from the gross negligence of the director.

History: En. Sec. 2, Ch. 304, L. 1991.

Compiler's Comments

Effective Date: Section 4, Ch. 304, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 1, 1991.

50-6-318 through 50-6-322 reserved.

50-6-323. Powers and duties of department. (1) The department has general authority to supervise and regulate emergency medical services in Montana.

(2) The department shall receive and investigate complaints relating to the operation of any emergency medical service, including complaints concerning:

(a) patient care provided by an emergency medical service;

(b) the condition of any vehicle or aircraft used as an ambulance; or

(c) individual performance by an emergency medical service provider.

(3) Upon completion of an investigation as provided in subsection (2), the department shall take appropriate action, including the institution of necessary legal proceedings, as authorized under this part.

(4) In order to carry out the provisions of this part, the department shall prescribe and enforce rules for emergency medical services. Rules of the department may include but are not limited to the following:

(a) the classification and identification of specific types and levels of prehospital and interhospital medical transportation or treatment services;

(b) procedures for issuing, denying, renewing, and canceling licenses;

(c) minimum licensing standards for each type and level of service, including requirements for personnel, medical control, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage as determined appropriate by the department; and

(d) other requirements necessary and appropriate to assure the quality, safety, and proper operation and administration of emergency medical services.

(5) A rule under this section is not effective until:

(a) a public hearing has been held for review of the rule; and

(b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed under 50-6-306 to conduct or operate an emergency medical service. Notice must be sent at least 30 days prior to the date of the public hearing.

History: En. Sec. 3, Ch. 387, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-6-324. Advisory committee. (1) The board or department may establish an advisory committee to assist in making determinations regarding:

(a) a request for waiver of licensing requirements as provided in 50-6-325;

(b) the resolution of a complaint as described in 50-6-323; and

(c) issuance of an order authorized under this part.

(2) The advisory committee must be established pursuant to rules adopted by the department.

History: En. Sec. 12, Ch. 387, L. 1989.

50-6-325. Waiver of licensing requirements. (1) The department may waive any licensing requirements under this part upon submission and approval of a written application for waiver by a person subject to licensing under this part.

(2) The department may waive a licensing requirement if the person provides sufficient justification to allow a finding by the department that:

(a) the waiver is necessary to avoid significant financial or other hardship; and

(b) granting the waiver would not jeopardize patient care or the public health and safety.

(3) A waiver must be issued on a temporary basis, not exceeding 6 months, and may be renewed by the department upon submission and approval of an additional application for waiver of licensing requirements.

(4) A waiver granted by the department may be revoked for good cause after notice and an opportunity for a hearing before the department have been provided to the person affected by the department's action.

(5) The decision of the department to deny or revoke a waiver under this section may be appealed to the board.

History: En. Sec. 8, Ch. 387, L. 1989.

50-6-326. Injunction to require compliance. (1) The department may seek an injunction from an appropriate district court to require compliance with this part or to require compliance with a rule of the department or an order issued by the department or board. The court to which the department applies for an injunction may issue a temporary restraining order if there is reasonable cause to believe that the allegations of the department are true.

(2) An action for injunctive relief initiated by the department pursuant to subsection (1) may be commenced in the district court of the county in which the defendant is located, resides, or is doing business. If the defendant cannot be located in Montana, the action may be commenced in the county where the violation is alleged to occur or have occurred, and the court has jurisdiction to restrain the violation and require compliance.

History: En. Sec. 10, Ch. 387, L. 1989.

50-6-327. Administrative enforcement. (1) If the department believes that there is a violation of this part or a violation of a rule of the department, it may serve notice of the violation upon the alleged violator or his agent. Service of notice must be by certified mail and is complete on the date of mailing.

(2) Notice required under subsection (1) must:

(a) specify the provision of this part or the rule alleged to be violated;

(b) contain a statement of the facts alleged to constitute a violation; and

(c) include an order that the alleged violator take necessary corrective action within a reasonable period of time as stated in the order. The order may include corrective action, such as decertification of a specific vehicle or aircraft from use as an ambulance or restriction on the use of a specific individual or type of or level of service in providing emergency medical service.

(3) An order issued pursuant to subsection (2) becomes final unless the person named in the order requests a hearing before the board. Such request for a hearing must be made in writing to the board at least 30 days after the date of service of notice of an alleged violation. On receipt of the request, the board shall schedule a date for a hearing.

(4) If, after a hearing, the board finds that a violation has occurred, it shall either affirm or modify the order issued by the department. An order issued by the board may prescribe the date by which the violation must cease and may prescribe time limits for corrective action. If, after a hearing, the board finds no violation has occurred, it shall rescind the department's order.

History: En. Sec. 11, Ch. 387, L. 1989.

CHAPTER 7

HOME HEALTH AGENCIES
(Repealed. Sec. 27, Ch. 347, L. 1979)

Chapter Compiler's Comments

Histories of Repealed Sections: **50-7-101 through 50-7-309.** En. Secs. 1 thru 10, Ch. 383, L. 1977; R.C.M. 1947, 69-7301 thru 69-7310.

CHAPTER 8

ONE-STEP FACILITY LICENSING

Part 1 — General

50-8-101. Definitions.
50-8-102. One-step licensing required.
50-8-103 and 50-8-104 reserved.
50-8-105. Inspections by employees of other department.

Part 1

General

50-8-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of corrections and human services, the department of health and environmental sciences, and the department of family services.

(2) "Facility" means:

(a) for the department of corrections and human services, nonmedical facilities including:

(i) mental health transitional living facilities; and

(ii) inpatient freestanding or intermediate transitional living facilities for alcohol/drug treatment or emergency detoxification;

(b) for the department of family services:

(i) community homes for the developmentally disabled, community homes for physically disabled persons, and adult foster care homes; and

(ii) youth care facilities; and

(c) for the department of health and environmental sciences:

(i) public accommodations, including roominghouses and retirement homes, hotels, and motels;

(ii) health care facilities or services, including hospitals, skilled and intermediate nursing home services, and intermediate care nursing home services for the mentally retarded;

(iii) freestanding medical facilities or care, including infirmaries, kidney treatment centers, and home health agencies; and

(iv) personal care facilities.

(3) "Inspecting authority" means the department or agency authorized by statute to perform a given inspection necessary for certification for licensure.

(4) "Licensing agency" means the agency that is authorized by statute to issue the license.

History: En. Sec. 1, Ch. 356, L. 1983; amd. Sec. 66, Ch. 609, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

Department of Corrections and Human Services, Title 2, ch. 15, part 23.

50-8-102. One-step licensing required. Each department shall provide one-step licensing of all facilities under its jurisdiction. One-step licensing is at a minimum the provision of a designated office within the department or, by agreement between departments, in another department, responsible for issuing facility licenses. The one-step licensing office shall facilitate intradepartmental certifications for licensure. When practicable, one-step licensure also includes:

(1) the coordination of all governmental licensing functions, state and local, required for the licensure of a facility for a program or a service and for health and safety standards. The coordination must include at a minimum the names, addresses, and functions of all governmental authorities enforcing such standards and may include the requirement that the responsible office be a clearinghouse for all forms and applications for other agencies and for assuming the responsibility for insuring timely inspections, reviews, and application processing by other agencies.

(2) the use of departmental employees to inspect specified types of facilities for particular health and safety standards as provided in 50-8-105.

History: En. Sec. 2, Ch. 356, L. 1983.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

50-8-103 and 50-8-104 reserved.

50-8-105. Inspections by employees of other department. (1) Each department may, by joint rule with a state agency or by interlocal agreement with other governmental entities, authorize departmental employees to perform specific health and safety inspections for certain classes of facilities under the jurisdiction of another department or agency. Such inspections may be limited by type of facility, scope of inspection, and type of inspection, such as original application, renewal application, routine or unannounced inspection, or other identifiable inspection situations.

(2) The inspecting authority, prior to authorizing employees of another department or agency to make an inspection, may require minimal standards of knowledge or training relevant to the type of inspection to be conducted. The inspecting authority may require periodic reexamination of such employees for necessary knowledge and ability.

(3) The inspecting authority delegates authority to the employees of another department or agency and is responsible for the quality of the inspections. The inspecting authority shall perform an inspection delegated to such an employee if the other department or agency or the head of the facility believes that the inspection situation is unique or that the employee is in error. The result of an inspection by the inspecting authority takes precedence over an inspection by an employee of another department or agency.

History: En. Sec. 3, Ch. 356, L. 1983.

Cross-References

Interlocal agreements, Title 7, ch. 11, part 1.

CHAPTER 9

RIGHTS OF THE TERMINALLY ILL ACT

Part 1 — General

50-9-101. Short title.
50-9-102. Definitions.
50-9-103. Declaration relating to use of life-sustaining treatment — designee.
50-9-104. Revocation of declaration.
50-9-105. When declaration operative.
50-9-106. Consent by others to withholding or withdrawal of treatment.
50-9-107. When health care provider may presume validity of declaration.
50-9-108. Effect of previous declaration.
50-9-109 reserved.
50-9-110. Authority to adopt rules.
50-9-111. Recognition of declarations executed in other states.

Part 2 — Effect on Health Care—Rights and Duties

50-9-201. Recording determination of terminal condition and content of declaration.
50-9-202. Treatment of qualified patients.
50-9-203. Transfer of patients.
50-9-204. Immunities.
50-9-205. Effect on insurance — patient's decision.
50-9-206. Penalties.

Part 1

General

Part Cross-References

Determination of death, 50-22-101.

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-9-101. Short title. This chapter may be cited as the "Montana Rights of the Terminally Ill Act".

History: En. Sec. 1, Ch. 369, L. 1985; amd. Sec. 1, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: Changed short title from "Montana Living Will Act" to "Montana Rights of the Terminally Ill Act". Amendment effective April 8, 1991.

50-9-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Attending physician" means the physician selected by or assigned to the patient, who has primary responsibility for the treatment and care of the patient.

(2) "Board" means the Montana state board of medical examiners.

(3) "Declaration" means a document executed in accordance with the requirements of 50-9-103.

(4) "Department" means the department of health and environmental sciences.

(5) "Emergency medical services personnel" means paid or volunteer firefighters, law enforcement officers, first responders, emergency medical technicians, or other emergency services personnel acting within the ordinary course of their professions.

(6) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the law of this state to administer health care in the ordinary course of business or practice of a profession.

(7) "Life-sustaining treatment" means any medical procedure or intervention that, when administered to a qualified patient, will serve only to prolong the dying process.

(8) "Living will protocol" means a locally developed, community-wide method or a standardized, state-wide method developed by the department and approved by the board, of providing palliative care to and withholding life-sustaining treatment from a qualified patient under 50-9-202 by emergency medical service personnel.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(10) "Physician" means an individual licensed under Title 37, chapter 3, to practice medicine in this state.

(11) "Qualified patient" means a patient 18 or more years of age who has executed a declaration in accordance with this chapter and who has been determined by the attending physician to be in a terminal condition.

(12) "Reliable documentation" means a standardized, state-wide identification card or form or a necklace or bracelet of uniform design, adopted by a written, formal understanding of the local community emergency medical services agencies and licensed hospice and home health agencies, that signifies and certifies that a valid and current declaration is on file and that the individual is a qualified patient.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(14) "Terminal condition" means an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of the attending physician, result in death within a relatively short time.

History: En. Sec. 2, Ch. 369, L. 1985; amd. Sec. 1, Ch. 475, L. 1989; amd. Sec. 2, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: In definition of health care provider, after "licensed", inserted "certified"; changed definition of life-sustaining procedure to life-sustaining treatment; in definition of living will protocol, after "life-sustaining", substituted "treatment" for "procedures"; inserted definition of person; in definition of physician, after "means", substituted "an individual" for "a person"; in definition of qualified patient, near beginning, inserted "18 or more years of age"; inserted definition of state; and in definition of terminal condition, after "life-sustaining", substituted "treatment" for "procedures". Amendment effective April 8, 1991.

50-9-103. Declaration relating to use of life-sustaining treatment — designee. (1) An individual of sound mind and 18 or more years of age may execute at any time a declaration governing the withholding or withdrawal of life-sustaining treatment. The declarant may designate another individual of sound mind and 18 or more years of age to make decisions governing the withholding or withdrawal of life-sustaining treatment. The declaration must be signed by the declarant, or another at the declarant's direction, and witnessed by two individuals. A physician or health care provider may presume, in the absence of actual notice to the contrary, that the declaration complies with this chapter and is valid.

(2) A declaration directing a physician to withhold or withdraw life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable or irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I direct my attending physician, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary to my comfort or to alleviate pain.

Signed this .... day of ...., ...
Signature ....
City, County, and State of Residence ....

The declarant voluntarily signed this document in my presence.

Witness ....
Address ....
Witness ....
Address ....

(3) A declaration that designates another individual to make decisions governing the withholding or withdrawal of life-sustaining treatment may, but need not, be in the following form:

DECLARATION

If I should have an incurable and irreversible condition that, without the administration of life-sustaining treatment, will, in the opinion of my attending physician, cause my death within a relatively short time and I am no longer able to make decisions regarding my medical treatment, I appoint .... or, if he or she is not reasonably available or is unwilling to serve, ..., to make decisions on my behalf regarding withholding or withdrawal of treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain, pursuant to the Montana Rights of the Terminally Ill Act.

If the individual I have appointed is not reasonably available or is unwilling to serve, I direct my attending physician, pursuant to the Montana Rights of the Terminally Ill Act, to withhold or withdraw treatment that only prolongs the process of dying and is not necessary for my comfort or to alleviate pain.

Signed this .... day of ...., ...
Signature ....
City, County, and State of Residence ....

The declarant voluntarily signed this document in my presence.

Witness ....
Address ....
Witness ....
Address ....

Name and address of designee.
Name ....
Address ....

(4) If the designation of an attorney-in-fact pursuant to 72-5-501 and 72-5-502, or the judicial appointment of an individual, contains written authorization to make decisions regarding the withholding or withdrawal of life-sustaining treatment, that designation or appointment constitutes, for the purposes of this part, a declaration designating another individual to act for the declarant pursuant to subsection (1).

(5) A physician or other health care provider who is furnished a copy of the declaration shall make it a part of the declarant's medical record and, if unwilling to comply with the declaration, promptly so advise the declarant and any individual designated to act for the declarant.

History: En. Sec. 3, Ch. 369, L. 1985; amd. Sec. 3, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted present first two sentences regarding execution of a declaration governing withholding of life-sustaining treatment for former first two sentences that read: "Any competent adult may execute a declaration at any time directing that life-sustaining procedures be withheld or withdrawn. However, the declaration is effective only if the declarant's condition is determined to be terminal and the declarant is not able to make treatment decisions"; deleted former (2) requiring declarant to notify physician of a declaration; near beginning of (2) after "declaration", inserted "directing a physician to withhold or withdraw life-sustaining treatment", in declaration form inserted reference to Montana Rights of the Terminally Ill Act, and deleted former third sentence regarding validity of declaration subject to revocation by declarant; inserted (3) establishing form for designation of another individual to withhold life-sustaining treatment; inserted (4) regarding designation of an attorney-in-fact; inserted (5) requiring physician to make declaration a part of declarant's medical records and to notify declarant of any unwillingness to comply; and made minor changes in style. Amendment effective April 8, 1991.

Cross-References

Persons under disability — guardianship and conservatorship, Title 72, ch. 5.

50-9-104. Revocation of declaration. (1) A declarant may revoke a declaration at any time and in any manner, without regard to mental or physical condition. A revocation is effective upon its communication to the attending physician or other health care provider by the declarant or a witness to the revocation. A health care provider or emergency medical services personnel witnessing a revocation shall act upon the revocation and shall communicate the revocation to the attending physician at the earliest opportunity. A revocation communicated to a person other than the attending physician, emergency medical services personnel, or a health care provider is not effective unless the attending physician is informed of it before the qualified patient is in need of life-sustaining treatment.

(2) The attending physician or other health care provider shall make the revocation a part of the declarant's medical record.

History: En. Sec. 4, Ch. 369, L. 1985; amd. Sec. 2, Ch. 475, L. 1989; amd. Sec. 4, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence after "manner", deleted "by which the declarant is able to communicate his intent to revoke", in second sentence, after "effective", deleted "only as to the attending physician or any health care provider acting under the guidance of that physician" and before "physician" inserted "attending", and in fourth sentence, at end, substituted "treatment" for "procedures"; and made minor changes in style. Amendment effective April 8, 1991.

50-9-105. When declaration operative. (1) A declaration becomes operative when:

(a) it is communicated to the attending physician; and

(b) the declarant is determined by the attending physician to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment.

(2) When the declaration becomes operative, the attending physician and other health care providers shall act in accordance with its provisions and with the instructions of a designee under 50-9-103(1) or comply with the transfer requirements of 50-9-203.

History: En. Sec. 11, Ch. 391, L. 1991.

Compiler's Comments

Effective Date: Section 16, Ch. 391, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 8, 1991.

50-9-106. Consent by others to withholding or withdrawal of treatment. (1) If a written consent to the withholding or withdrawal of the treatment, witnessed by two individuals, is given to the attending physician, the attending physician may withhold or withdraw life-sustaining treatment from an individual who:

(a) has been determined by the attending physician to be in a terminal condition and no longer able to make decisions regarding administration of life-sustaining treatment; and

(b) has no effective declaration.

(2) The authority to consent or to withhold consent under subsection (1) may be exercised by the following individuals, in order of priority:

(a) the spouse of the individual;

(b) an adult child of the individual or, if there is more than one adult child, a majority of the adult children who are reasonably available for consultation;

(c) the parents of the individual;

(d) an adult sibling of the individual or, if there is more than one adult sibling, a majority of the adult siblings who are reasonably available for consultation; or

(e) the nearest other adult relative of the individual by blood or adoption who is reasonably available for consultation.

(3) If a class entitled to decide whether to consent is not reasonably available for consultation and competent to decide or if it declines to decide, the next class is authorized to decide. However, an equal division in a class does not authorize the next class to decide.

(4) A decision to grant or withhold consent must be made in good faith. A consent is not valid if it conflicts with the expressed intention of the individual.

(5) A decision of the attending physician acting in good faith that a consent is valid or invalid is conclusive.

(6) Life-sustaining treatment cannot be withheld or withdrawn pursuant to this section from an individual known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

History: En. Sec. 12, Ch. 391, L. 1991.

Compiler's Comments

Effective Date: Section 16, Ch. 391, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 8, 1991.

50-9-107. When health care provider may presume validity of declaration. In the absence of knowledge to the contrary, a physician or other health care provider may assume that a declaration complies with this chapter and is valid.

History: En. Sec. 13, Ch. 391, L. 1991.

Compiler's Comments

Effective Date: Section 16, Ch. 391, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 8, 1991.

50-9-108. Effect of previous declaration. An instrument executed before October 1, 1991, that substantially complies with 50-9-103(1) is effective under this chapter.

History: En. Sec. 14, Ch. 391, L. 1991.

Compiler's Comments

Effective Date: Section 16, Ch. 391, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 8, 1991.

50-9-109 reserved.

50-9-110. Authority to adopt rules. The department may adopt rules to implement this chapter.

History: En. Sec. 4, Ch. 475, L. 1989.

50-9-111. Recognition of declarations executed in other states. A declaration executed in a manner substantially similar to 50-9-103 in another state and in compliance with the law of that state is effective for purposes of this chapter.

History: En. Sec. 11, Ch. 369, L. 1985.

Part 2

Effect on Health Care — Rights and Duties

50-9-201. Recording determination of terminal condition and content of declaration. Upon determining that a declarant is in a terminal condition, the attending physician who knows of a declaration shall record that determination and the terms of the declaration in the declarant's medical record.

History: En. Sec. 5, Ch. 369, L. 1985; amd. Sec. 5, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: Made minor changes in style. Amendment effective April 8, 1991.

50-9-202. Treatment of qualified patients. (1) A qualified patient may make decisions regarding life-sustaining treatment so long as the patient is able to do so.

(2) This chapter does not affect the responsibility of the attending physician or other health care provider to provide treatment, including nutrition and hydration, for a patient's comfort care or alleviation of pain.

(3) Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual known to the attending physician to be pregnant so long as it is probable that the fetus will develop to the point of live birth with continued application of life-sustaining treatment.

History: En. Sec. 6, Ch. 369, L. 1985; amd. Sec. 6, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence, substituted "treatment" for "procedures" and deleted second sentence that read: "If a qualified patient is not able to make such decisions, the declaration governs decisions regarding use of life-sustaining procedures"; near beginning of (2) substituted "affect the responsibility of the attending physician or other health care provider to provide treatment" for "prohibit the application of any medical procedure or intervention"; in (3), at beginning, substituted "Life-sustaining treatment cannot be withheld or withdrawn pursuant to a declaration from an individual" for "The declaration of a qualified patient" and at end substituted "treatment" for "procedures"; and made minor changes in style. Amendment effective April 8, 1991.

Cross-References

Protection of premature infants born alive, 50-20-108.

50-9-203. Transfer of patients. An attending physician or other health care provider who is unwilling to comply with this chapter shall take all reasonable steps as promptly as practicable to transfer care of the declarant to another physician or health care provider who is willing to do so. If the policies of a health care facility preclude compliance with the declaration of a qualified patient under this chapter, that facility shall take all reasonable steps to transfer the patient to a facility in which the provisions of this chapter can be carried out.

History: En. Sec. 7, Ch. 369, L. 1985; amd. Sec. 7, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of first sentence, after "physician", inserted "or other health care provider", near middle, after "comply with", substituted "this chapter" for "the requirements of 50-9-201 or who is unwilling to comply with the declaration of a qualified patient in accordance with 50-9-202", after "steps" inserted "as promptly as practicable", and near end, after "physician", inserted "or health care provider who is willing to do so"; and made minor changes in style. Amendment effective April 8, 1991.

Cross-References

Right to refuse participation in sterilization, Title 50, ch. 5, part 5.

Right to refuse participation in abortion, 50-20-111.

50-9-204. Immunities. (1) In the absence of actual notice of the revocation of a declaration, the following, while acting in accordance with the requirements of this chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

(a) a physician who causes the withholding or withdrawal of life-sustaining treatment from a qualified patient;

(b) a person who participates in the withholding or withdrawal of life-sustaining treatment under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining treatment under the direction of or with the authorization of a physician or who on receipt of reliable documentation follow a living will protocol;

(d) emergency medical services personnel who proceed to provide life-sustaining treatment to a qualified patient pursuant to a revocation communicated to them; and

(e) a health care facility in which withholding or withdrawal occurs.

(2) A physician or other health care provider whose action under this chapter is in accord with reasonable medical standards is not subject to civil or criminal liability or discipline for unprofessional conduct with respect to that decision.

(3) A physician or other health care provider whose decision about the validity of consent under 50-9-106 is made in good faith is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

(4) An individual designated pursuant to 50-9-103(1) or an individual authorized to consent pursuant to 50-9-106, whose decision is made or consent is given in good faith pursuant to this chapter, is not subject to criminal or civil liability or discipline for unprofessional conduct with respect to that decision.

History: En. Sec. 8, Ch. 369, L. 1985; amd. Sec. 3, Ch. 475, L. 1989; amd. Sec. 8, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a), (1)(b), and (1)(c) substituted "treatment" for "procedures"; in (2), near beginning after "physician", inserted "or other health care provider whose action under this chapter is in accord with reasonable medical standards" and after "liability" substituted "or discipline for unprofessional conduct with respect to that decision" for "for actions under this chapter that are in accord with reasonable medical standards"; inserted (3) regarding liability for decisions on consent made in good faith by a physician or other health care provider; and inserted (4) regarding liability for decisions on consent made in good faith by a designated individual. Amendment effective April 8, 1991.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-9-205. Effect on insurance — patient's decision. (1) Death resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this chapter does not constitute, for any purpose, a suicide or homicide.

(2) The making of a declaration pursuant to 50-9-103 does not affect the sale, procurement, or issuance of any policy of life insurance or annuity, nor does it affect, impair, or modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated by the withholding or withdrawal of life-sustaining treatment from an insured, notwithstanding any term of the policy to the contrary.

(3) A person may not prohibit or require the execution of a declaration as a condition for being insured for or receiving health care services.

(4) This chapter creates no presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use, withholding, or withdrawal of life-sustaining treatment in the event of a terminal condition.

(5) This chapter does not affect the right of a patient to make decisions regarding use of life-sustaining treatment, so long as the patient is able to do so, or impair or supersede a right or responsibility that any person has to effect the withholding or withdrawal of medical care.

(6) This chapter does not require a physician or other health care provider to take action contrary to reasonable medical standards.

(7) This chapter does not condone, authorize, or approve mercy killing or euthanasia.

History: En. Sec. 10, Ch. 369, L. 1985; amd. Sec. 9, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence, substituted "treatment" for "procedures pursuant to a declaration and"; in (2), in first sentence near middle after "insurance", inserted "or annuity" and before "modify" inserted "affect, impair, or" and in second sentence substituted "treatment" for "procedures" and after "insured" deleted "qualified patient"; at beginning of (3) substituted "A person may not prohibit or require the execution of" for "No physician, health care facility, or other health care provider and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may require any person to execute"; in (4), near middle, inserted reference to revocation and near end substituted "treatment" for "procedures"; in (5), at beginning, substituted "This chapter does not affect" for "Nothing in this chapter increases or decreases", near middle substituted reference to treatment for reference to procedures, at end, after "care", deleted "in any lawful manner", and deleted former second sentence that read: "In that respect, the provisions of this chapter are cumulative"; inserted (6) regarding action contrary to medical standards; in (7), before "authorize", inserted "condone" and after "killing" inserted "or euthanasia"; and made minor changes in style. Amendment effective April 8, 1991.

50-9-206. Penalties. (1) A physician or other health care provider who willfully fails to transfer the care of a patient in accordance with 50-9-203 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A physician who willfully fails to record the determination of terminal condition or the terms of a declaration in accordance with 50-9-201 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) An individual who purposely conceals, cancels, defaces, or obliterates the declaration of another without the declarant's consent or who falsifies or forges a revocation of the declaration of another is guilty of a misdemeanor

punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(4) An individual who falsifies or forges the declaration of another individual or purposely conceals or withholds personal knowledge of a revocation as provided in 50-9-104 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(5) A person who requires or prohibits the execution of a declaration as a condition for being insured for or receiving health care service is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(6) A person who coerces or fraudulently induces an individual to execute a declaration is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(7) The penalties provided in this section do not displace any sanction applicable under other law.

History: En. Sec. 9, Ch. 369, L. 1985; amd. Sec. 10, Ch. 391, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (1), after "physician", inserted "or other health care provider" and after "transfer" inserted "the care of a patient"; in (2), after "condition", inserted "or the terms of a declaration"; in (3) and (4), in two places, inserted references to individual; in (4), after "50-9-104", deleted "with the intent to cause a withholding or withdrawal of life-sustaining procedures"; inserted (5) establishing penalty regarding execution of a declaration as condition of insurance; inserted (6) establishing penalty for inducing execution of a declaration; and inserted (7) regarding nondisplacement of other legal sanctions. Amendment effective April 8, 1991.

Cross-References

Licensing and regulation of physicians, Title 37, ch. 3.

CHAPTER 10

DO NOT RESUSCITATE — NOTIFICATION

Part 1 — General

50-10-101. Definitions.
50-10-102. Immunities.
50-10-103. Adherence to do not resuscitate protocol — transfer of patients.
50-10-104. Effect on insurance — patient's decision.
50-10-105. Rulemaking authority.
50-10-106. Penalties.

Part 1

General

Part Compiler's Comments

Effective Date: Section 7, Ch. 581, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 23, 1991.

50-10-101. Definitions. As used in this part, unless the context clearly requires otherwise, the following definitions apply:

(1) "Attending physician" has the meaning provided in 50-9-102.

(2) "Board" means the state board of medical examiners.

(3) "Department" means the department of health and environmental sciences.

(4) "DNR identification" means a standardized identification card, form, necklace, or bracelet of uniform size and design, approved by the department, that signifies that the possessor has executed a declaration, as provided in 50-9-103, that has not been revoked or that the possessor's attending physician has issued a do not resuscitate order for the possessor and has documented the grounds for the order in the possessor's medical file.

(5) "Do not resuscitate order" means a directive from a licensed physician that emergency life-sustaining procedures should not be administered to a particular person.

(6) "Do not resuscitate protocol" means a standardized method of procedure, approved by the board and adopted in the rules of the department, for the withholding of emergency life-sustaining procedures by physicians and emergency medical services personnel.

(7) "Emergency medical services personnel" has the meaning provided in 50-9-102.

(8) "Health care facility" has the meaning provided in 50-5-101.

(9) "Life-sustaining procedure" means cardiopulmonary resuscitation or a component of cardiopulmonary resuscitation.

(10) "Physician" means a person licensed under Title 37, chapter 3, to practice medicine in this state.

History: En. Sec. 1, Ch. 581, L. 1991.

50-10-102. Immunities. (1) The following are not subject to civil or criminal liability and are not guilty of unprofessional conduct upon discovery of DNR identification upon a person:

(a) a physician who causes the withholding or withdrawal of life-sustaining procedures from that person;

(b) a person who participates in the withholding or withdrawal of life-sustaining procedures under the direction or with the authorization of a physician;

(c) emergency medical services personnel who cause or participate in the withholding or withdrawal of life-sustaining procedures from that person;

(d) a health care facility in which withholding or withdrawal of life-sustaining procedures from that person occurs;

(e) physicians, persons under the direction or authorization of a physician, emergency medical services personnel, or health care facilities that provide life-sustaining procedures pursuant to an oral or written request communicated to them by a person who possesses DNR identification.

(2) The provisions of subsections (1)(a) through (1)(d) apply when a life-sustaining procedure is withheld or withdrawn in accordance with the do not resuscitate protocol.

(3) Emergency medical services personnel who follow a do not resuscitate order from a licensed physician are not subject to civil or criminal liability and are not guilty of unprofessional conduct.

History: En. Sec. 2, Ch. 581, L. 1991.

50-10-103. Adherence to do not resuscitate protocol — transfer of patients. (1) Emergency medical services personnel other than physicians shall comply with the do not resuscitate protocol when presented with either do not resuscitate identification, an oral do not resuscitate order issued directly by a physician, or a written do not resuscitate order entered on a form prescribed by the department.

(2) An attending physician or a health care facility unwilling or unable to comply with the do not resuscitate protocol shall take all reasonable steps to transfer a person possessing DNR identification to another physician or to a health care facility in which the do not resuscitate protocol will be followed.

History: En. Sec. 3, Ch. 581, L. 1991.

50-10-104. Effect on insurance — patient's decision. (1) Death resulting from the withholding or withdrawal of emergency life-sustaining procedures pursuant to the do not resuscitate protocol and in accordance with this part is not, for any purpose, a suicide or homicide.

(2) The possession of DNR identification pursuant to this part does not affect in any manner the sale, procurement, or issuance of any policy of life insurance, nor does it modify the terms of an existing policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any manner by the withholding or withdrawal of emergency life-sustaining procedures from an insured person possessing DNR identification, notwithstanding any term of the policy to the contrary.

(3) A physician, health care facility, or other health care provider and a health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital plan may not require a person to possess DNR identification as a condition for being insured for or receiving health care services.

(4) This part does not create a presumption concerning the intention of an individual who does not possess DNR identification with respect to the use, withholding, or withdrawal of emergency life-sustaining procedures.

(5) This part does not increase or decrease the right of a patient to make decisions regarding the use of emergency life-sustaining procedures if the patient is able to do so, nor does this part impair or supersede any right or responsibility that a person has to effect the withholding or withdrawal of medical care in any lawful manner. In that respect, the provisions of this part are cumulative.

(6) This part does not authorize or approve mercy killing.

History: **En. Sec. 4, Ch. 581, L. 1991.**

50-10-105. Rulemaking authority. (1) Upon the adoption of a do not resuscitate protocol by the board, the department may adopt a standard form of DNR identification to be used statewide.

(2) The department shall adopt rules to administer the provisions of this part.

History: **En. Sec. 5, Ch. 581, L. 1991.**

50-10-106. Penalties. (1) A physician who willfully fails to transfer a patient in accordance with 50-10-103 is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(2) A person who purposely conceals, cancels, defaces, or obliterates the DNR identification of another without the consent of the possessor or who falsifies or forges a revocation of the DNR identification of another is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

(3) A person who falsifies or forges the DNR identification of another or purposely conceals or withholds personal knowledge of a revocation of DNR identification with the intent to cause the use, withholding, or withdrawal of life-sustaining procedures is guilty of a misdemeanor punishable by a fine not to exceed $500 or imprisonment in the county jail for a term not to exceed 1 year, or both.

History: **En. Sec. 6, Ch. 581, L. 1991.**

CHAPTERS 11 THROUGH 14

RESERVED

CHAPTER 15

VITAL STATISTICS

Part 1 — General Provisions

50-15-101. Definitions.
50-15-102. Statewide system of vital statistics to be established.
50-15-103. Duties of department.
50-15-104. Appointment and supervision of local registrars.
50-15-105. Appointment of deputies authorized.
50-15-106. Registrars and deputies to report violations.
50-15-107. Payment of fees to local registrars.

50-15-108. Duty to furnish information.
50-15-109. Certificates.
50-15-110. Certified copy of certificate.
50-15-111. Certified copy fee.
50-15-112. Inspection of records and issuance of copies limited.
50-15-113. Disclosure of information to governmental agencies.
50-15-114. Unlawful acts and penalties.

Part 2 — Birth

50-15-201. Birth certificate to be filed.
50-15-202. Unattended birth.
50-15-203. Child of unknown parentage.
50-15-204. Delayed or amended birth certificate.
50-15-205. Establishment of date and place of birth when certificate cannot be obtained.
50-15-206. Permissible disclosure of birth out of wedlock.
50-15-207. New birth certificate upon proof of legitimation.

Part 3 — Marriage and Adoption

50-15-301. Marriage certificates.
50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage.
50-15-303. Certificates of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption.
50-15-304. Substitute birth certificate for person adopted.

Part 4 — Death

50-15-401. Death certificate to be filed.
50-15-402. Copy to be forwarded to deceased's county of residence.
50-15-403. Preparation of certificate when death medically attended.
50-15-404. Preparation of certificate when death not medically attended.
50-15-405. Permit for disposition of body.
50-15-406. Body brought into state for disposition.
50-15-407. Disinterment permit.

Parts 5 and 6 reserved

Part 7 — Tumor Registry

50-15-701. Short title.
50-15-702. Definitions.
50-15-703. Duty to report tumors.
50-15-704. Confidentiality.
50-15-705. Tumor registry.
50-15-706. Rules.

Part 1

General Provisions

50-15-101. Definitions. Unless the context requires otherwise, in parts 1 through 4 the following definitions apply:

(1) "Board" means the board of health and environmental sciences provided for in 2-15-2104.

(2) "Dead body" means a lifeless human body or parts of a body from which it reasonably may be concluded that death occurred recently.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Dissolution of marriage" means a marriage terminated pursuant to Title 40, chapter 4, part 1.

(5) "Fetal death" means a birth after 20 weeks of gestation, or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery, that is not a live birth.

(6) "Invalid marriage" means a marriage decreed by a district court to be invalid for the reasons contained in 40-1-402.

(7) "Live birth" means the birth of a child who shows evidence of life after being entirely outside the mother.

(8) "Local registrar" means a person appointed by the department to act as its agent in administering this chapter in the area set forth in the letter of appointment.

(9) "Person in charge of interment" means a person who places or causes to be placed a dead body or the ashes after cremation in a grave, vault, urn, or other receptacle or otherwise disposes of the body.

(10) "Physician" means a person legally authorized to practice medicine in this state.

(11) "Vital statistics" includes the registration, preparation, transcription, collection, compilation, and preservation of data pertaining to births, adoptions, legitimations, deaths, fetal deaths, marital status, and incidental supporting data.

History: En. Secs. 2, 41, Ch. 197, L. 1967; amd. Secs. 28, 48, Ch. 349, L. 1974; R.C.M. 1947, 69-4102(1), (2), 69-4401; amd. Sec. 4, Ch. 228, L. 1981; amd. Sec. 1, Ch. 402, L. 1991.

Compiler's Comments

1991 Amendment: In definition of fetal death, after "gestation", inserted "or before 20 weeks of gestation if the fetus weighs more than 500 grams at the time of delivery"; and made minor change in style.

Cross-References

Determination of death, 50-22-101.

50-15-102. Statewide system of vital statistics to be established. The department shall establish a statewide system of vital statistics and adopt rules for gathering, recording, using, and preserving vital statistics.

History: En. Sec. 42, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4402.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-103. Duties of department. The department shall:

(1) divide the state into registration districts and change districts as necessary;

(2) gather, record, use, and preserve vital statistics;

(3) enforce rules adopted by the department for gathering, recording, using, and preserving vital statistics;

(4) give instructions and prescribe forms for gathering, recording, preserving, and using vital statistics.

History: En. Sec. 43, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4403.

50-15-104. Appointment and supervision of local registrars. The department shall:

(1) appoint local registrars;

(2) supervise local registrars and other persons required to comply with this chapter.

History: En. Sec. 49, Ch. 197, L. 1967; amd. Sec. 51, Ch. 349, L. 1974; R.C.M. 1947, 69-4409.

50-15-105. Appointment of deputies authorized. With approval of the department, local registrars may appoint deputies.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

50-15-106. Registrars and deputies to report violations. Local registrars and deputies shall immediately report violations of this chapter or rules of the department to the department.

History: En. Sec. 50, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4410(part).

50-15-107. Payment of fees to local registrars. (1) The department may specify by regulation a fee to be paid each local registrar for each complete birth, death, or fetal death certificate forwarded by the local registrar to the department or a monthly report stating the local registrar did not file certificates.

(2) The department shall annually certify to the county treasurer the number of births, fetal deaths, deaths, or monthly reports received from his county with the names of the local registrars and the amount due each.

(3) The treasurer shall pay each local registrar out of the county general fund.

History: En. Sec. 71, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4431.

Cross-References

Fees to be charged by registrars for copies, 7-4-2631.

50-15-108. Duty to furnish information. (1) Any person having knowledge of the fact shall furnish information he possesses about a birth, death, fetal death, marriage, dissolution of marriage, or invalid marriage upon demand of the department.

(2) The person in charge of any institution or facility for the care of persons shall record and report all data required by this chapter relating to inmates or patients of the institution or facility.

History: (1)En. Sec. 75, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4435, R.C.M. 1947; (2)En. Sec. 70, Ch. 197, L. 1967; Sec. 69-4430, R.C.M. 1947; R.C.M. 1947, 69-4430, 69-4435; amd. Sec. 5, Ch. 228, L. 1981.

50-15-109. Certificates. (1) All certificates shall include information required by the department.

(2) Local registrars shall forward original certificates to the department, file a duplicate copy with the county clerk and recorder, and retain a triplicate copy.

(3) Local registrars shall not issue certified copies of certificates.

(4) Certificates filed within 6 months after the time prescribed by the department shall be prima facie evidence of the facts stated in the certificates. Data pertaining to the father of a child is prima facie evidence only if the alleged father is the husband of the mother. If the alleged father is not the husband of the mother, data pertaining to the alleged father is not evidence in any proceedings adverse to his interests, his heirs, next of kin, devisees, legatees, or other successors in interest.

History: En. Secs. 51, 52, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4411, 69-4412.

Cross-References

Uniform Parentage Act, Title 40, ch. 6, part 1.

50-15-110. Certified copy of certificate. Subject to the limitations of 50-15-112, 50-15-113, 50-15-114, subsections (3) and (4) of 50-15-204, and 50-15-206, the department shall furnish to any applicant a certified copy of a certificate or part of it upon request which shall be considered the same as the original.

History: En. Sec. 46, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4406.

50-15-111. Certified copy fee. (1) The department shall prescribe a fee of not less than $5 for a certified copy of certificates or search of files.

(2) Fees received for a certified copy of a certificate or a search of files shall be deposited in the state special revenue fund to be used by the department for the maintenance of indexes to and costs for the preservation of vital records.

History: (1)En. Sec. 47, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4407, R.C.M. 1947; (2)En. Sec. 48, Ch. 197, L. 1967; Sec. 69-4408, R.C.M. 1947; R.C.M. 1947, 69-4407(part), 69-4408; amd. Sec. 6, Ch. 228, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 1, Ch. 587, L. 1983.

Cross-References

Fund structure, Title 17, ch. 2.

50-15-112. Inspection of records and issuance of copies limited. (1) Except as provided in subsection (3), the department and county clerk and recorders may not permit inspection of the records or issue copies of a certificate unless they are satisfied that the applicant has a direct and tangible interest in the data recorded and that the information is necessary for the determination of personal or property rights.

(2) “Tangible interest” includes but is not limited to:

(a) the interests of the persons described in 50-15-206 for the purposes of custody or child support actions, social security eligibility determinations, or Indian tribal enrollment determinations;

(b) the interest of a funeral director or mortician licensed under Title 37, chapter 19, with respect to the funeral of a deceased individual named on a death certificate.

(3) The department and county clerk and recorders may, if satisfied that the information is necessary for the determination of property rights, permit inspection of a death certificate by and issue a copy of a death certificate to a person conducting a title search to determine heirship on property owned or once owned by the deceased.

History: En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; R.C.M. 1947, 69-4404(part); amd. Sec. 1, Ch. 178, L. 1979; amd. Sec. 1, Ch. 118, L. 1989; amd. Sec. 1, Ch. 456, L. 1989; amd. Sec. 1, Ch. 384, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (1) inserted exception clause and after "department" inserted "and county clerk and recorders"; and inserted (3) authorizing public access to death certificates when conducting a title search.

Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-113. Disclosure of information to governmental agencies. (1) The board may direct the department to disclose information from its records to federal, state, county, or municipal agencies for use only as prescribed by the board.

(2) If no identification of individuals is made, the board may permit the use of data contained in vital statistics records for research purposes.

(3) The department may provide transcripts to the federal agency responsible for vital statistics if it is reimbursed for costs.

History: En. Secs. 45, 47, Ch. 197, L. 1967; amd. Secs. 50, 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4405, 69-4407(part).

Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-114. Unlawful acts and penalties. (1) It is unlawful to disclose data in the vital statistics records of the department, local registrars, or county clerk and recorder unless disclosure is authorized by law.

(2) A person shall be fined not more than $1,000, imprisoned not more than 1 year, or both, if:

(a) he willfully and knowingly makes any false statement in a report, record, or certificate required to be filed by law or in an application for an amendment thereof or willfully and knowingly supplies false information intending that the information be used in the preparation of any report, record, or certificate or amendment;

(b) without lawful authority and with the intent to deceive, he makes, alters, amends, or mutilates any report, record, or certificate required to be filed under law or a certified copy of the report, record, or certificate;

(c) he willfully and knowingly uses or attempts to use or furnish to another for use, for any purpose of deception, any certificate, record, report, or certified copy made, altered, amended, or mutilated;

(d) with the intention to deceive, he willfully uses or attempts to use any birth certificate or certified copy of a birth record knowing that such certificate or certified copy was issued upon a record which is false in whole or in part or which relates to the birth of another person;

(e) he willfully and knowingly furnishes a birth certificate or certified copy of a birth record with the intention that it be used by a person other than the person to whom the birth record relates.

(3) A person shall be fined not less than $25 or more than $500, imprisoned for not more than 30 days, or both, if:

(a) he knowingly transports or accepts for transportation, interment, or other disposition a dead body without an accompanying permit as provided by law;

(b) he refuses to provide information required by law;

(c) he willfully neglects or violates any of the provisions of law or refuses to perform any of the duties imposed upon him by law.

History: (1)En. Sec. 44, Ch. 197, L. 1967; amd. Sec. 49, Ch. 349, L. 1974; Sec. 69-4404, R.C.M. 1947; (2)En. Sec. 76, Ch. 197, L. 1967; Sec. 69-4436, R.C.M. 1947; (3)En. Sec. 77, Ch. 197, L. 1967; Sec. 69-4437, R.C.M. 1947; R.C.M. 1947, 69-4404(part), 69-4436, 69-4437; amd. Sec. 1, Ch. 487, L. 1989; amd. Sec. 2, Ch. 384, L. 1991.

Compiler's Comments

1991 Amendment: At end of (1), after "law", deleted "and approved by the department".

Cross-References

"Willfully" defined, 1-1-204.

"Knowingly" defined, 1-1-204, 45-2-101.

Permit for disposition of body, 50-15-405.

Part 2

Birth

Part Cross-References

County Clerk to record births, 7-4-2613, 7-4-2619.

50-15-201. Birth certificate to be filed. Within the time prescribed by the department, a birth certificate shall be filed with the local registrar of the district in which the birth occurred by:

(1) the physician, midwife, or other legally authorized person if the birth is attended;

(2) one of the parents if the birth is unattended.

History: En. Sec. 53, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4413.

Cross-References

Change of name procedure, Title 27, ch. 31.

Birth date, procedure for judicial determination, Title 27, ch. 32.

50-15-202. Unattended birth. (1) If a birth is unattended and neither parent is able to prepare a birth certificate, the local registrar shall:

(a) secure information from any person having knowledge of the birth;

(b) prepare and file a birth certificate;

(c) within the time prescribed by the department, file a supplementary report furnishing information omitted from the original birth certificate if additional information is received.

(2) Birth certificates completed by a supplementary report shall not be considered "delayed" or "altered".

History: En. Sec. 54, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4414.

50-15-203. Child of unknown parentage. (1) A person who assumes custody of a child of unknown parentage shall immediately file with the local registrar a written report which shall constitute a birth certificate.

(2) The report shall contain:

(a) the date and place of finding or assumption of custody;

(b) sex, color or race, and approximate age of the child;

(c) name and address of the person or institution with whom the child has been placed for care;

(d) name given to the child by the finder or person who assumes custody.

(3) The place where the child was found or custody assumed shall be the place of birth.

(4) The date of birth shall be determined by approximation.

(5) If the child is identified and a regular birth certificate is found or obtained, the report shall be sealed and may be opened only by court order.

History: En. Sec. 55, Ch. 197, L. 1967; R.C.M. 1947, 69-4415.

50-15-204. Delayed or amended birth certificate. (1) After the time prescribed by the department, a person born in this state may file a birth certificate upon submitting proof as required by the department or by any court.

(2) A person may amend a birth, death, or fetal death certificate upon submitting proof as required by the department.

(3) If birth certificates are accepted 6 months or more after the time prescribed for filing or are altered by the department after filing, the certificate shall show the date of the delayed filing or alteration and the mark "delayed" or "altered". A summary statement of the evidence in support of the delayed filing or alteration shall be endorsed on the certificate.

(4) The probative value of a "delayed" or "altered" certificate of birth is determined by the judicial or administrative body before whom the certificate is offered as evidence.

History: (1), (2)En. Sec. 56, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4416, R.C.M. 1947; (3)En. Sec. 57, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; Sec. 69-4417, R.C.M. 1947; (4)En. Sec. 59, Ch. 197, L. 1967; Sec. 69-4419, R.C.M. 1947; R.C.M. 1947, 69-4416, 69-4417, 69-4419.

Cross-References

Proof of contents of public record, Rule 1005, M.R.Ev. (see Title 26, ch. 10).

50-15-205. Establishment of date and place of birth when certificate cannot be obtained. If a person born in this state cannot obtain a birth certificate from the department, the judicial procedure to establish date and place of birth is as follows:

(1) The person petitions the district court for an order establishing a public record of his birth alleging the facts which he claims entitle him to the birth certificate.

(2) If the court is satisfied of the truth of the allegations in the petition, it makes an order reciting the facts, determining the time and place of birth, names of parents, and other relevant facts.

(3) The court order or a certified copy is recorded with the county clerk and recorder and with the department.

(4) From the court order, the department makes a transcript of the important facts and issues a delayed birth certificate.

History: En. Sec. 58, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4418.

Cross-References

Birth date — procedure for judicial determination, Title 27, ch. 32.

50-15-206. Permissible disclosure of birth out of wedlock. (1) Disclosure of birth out of wedlock or information from which birth out of wedlock can be ascertained may be made only:

(a) upon an order of a court to determine personal or property rights. An adopted person of legal age may apply to the court for such an order.

(b) upon request of the department of social and rehabilitation services, the department of family services, the department of revenue, or a licensed adoption agency for purposes of custody or child support actions, social security eligibility determinations, or Indian tribal enrollment determinations;

(c) upon request of the natural parent during the child's minority unless the child has been placed for adoption.

(2) Except when an order of the court is sought, prior to disclosure, the requesting party must submit in writing to the department:

(a) proof of identity when appropriate;

(b) the need for the information; and

(c) the specific purpose for which the information is to be used. The information may be used only for that purpose.

History: En. Sec. 62, Ch. 197, L. 1967; R.C.M. 1947, 69-4422; amd. Sec. 2, Ch. 178, L. 1979; amd. Sec. 67, Ch. 609, L. 1987; amd. Sec. 2, Ch. 118, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

50-15-207. New birth certificate upon proof of legitimation. Upon receipt of proof of legitimation, the department shall prepare a new birth certificate in the new name of the person legitimated. Evidence upon which the new certificate is based and the original birth certificate shall be sealed and may be opened only upon court order. In case of legitimation, the department shall substitute records in the way provided in 50-15-304(2) for records of adoption.

History: En. Sec. 63, Ch. 197, L. 1967; amd. Sec. 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4423.

Part 3

Marriage and Adoption

Part Cross-References

County Clerk to maintain index of marriage certificates, 7-4-2619.

Marriage license requirements, Title 40, ch. 1, part 2.

Proof of marriage without solemnization, 40-1-311.

Registration of marriages, 40-1-321.

Certificates of marriage and records thereof as evidence of marriage, 40-1-322.

Proof of solemnized marriage when no record, 40-1-323.

Adoption, Title 40, ch. 8.

50-15-301. Marriage certificates. Before the 10th day of each month, each clerk of a district court shall report marriage certificates filed with him during the preceding calendar month to the department. Reports shall be on forms and contain information prescribed by the department. The applicant for a marriage license shall pay a recording fee of 25 cents to the officer authorized to issue the marriage license.

History: En. Sec. 72, Ch. 197, L. 1967; amd. Secs. 107 and 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4432; amd. Sec. 7, Ch. 228, L. 1981.

Cross-References

Marriage licenses, Title 40, ch. 1, part 2.

50-15-302. Clerk to report decree of dissolution or declaration of invalidity of marriage. (1) At the same time a decree of dissolution or declaration of invalidity of marriage is filed, the clerk of court shall prepare a report to the department on the form prescribed by the department. Parties to the action or their attorneys shall supply the clerk with necessary information.

(2) The report shall include the:

(a) name, age, birthplace, residence, race or color, and occupation of each party;

(b) number, date, and place of any previous marriage of either party;

(c) number of children under 18 years of age in custody of either party and residing with him;

(d) grounds for the action;

(e) number of the cause of action;

(f) county and judicial district where the action is filed; and

(g) date of judgment and the party which was granted it.

History: En. Sec. 74, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4434; amd. Sec. 4, Ch. 37, L. 1979.

Cross-References

Declaration of invalidity, Title 40, ch. 1, part 4.

Dissolution of marriage, Title 40, ch. 4, part 1.

50-15-303. Certificates of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption. Before the 10th day of each month, the clerk of court shall prepare and forward to the department a certificate for each decree of dissolution of marriage, adoption, declaration of invalidity of marriage, or annulment of adoption that became final during the preceding calendar month. Certificates shall be on forms prescribed by the department.

History: En. Sec. 73, Ch. 197, L. 1967; amd. Secs. 107, 110, Ch. 349, L. 1974; R.C.M. 1947, 69-4433; amd. Sec. 5, Ch. 37, L. 1979; amd. Sec. 8, Ch. 228, L. 1981.

Cross-References

Declaration of invalidity, Title 40, ch. 1, part 4.

Termination of marriage, Title 40, ch. 4.

Uniform Adoption Act, Title 40, ch. 8.

50-15-304. Substitute birth certificate for person adopted. (1) The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is as follows:

(a) Before the 16th day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.

(b) The department shall prepare a substitute certificate containing:

(i) the new name of the adopted person;

(ii) the true date and place of birth and sex of the adopted person;

(iii) statistical facts concerning the adoptive parents in place of the natural parents;

(iv) the words "department of health and environmental sciences" substituted for the words "attendant's own signature"; and

(v) dates of recording as shown on the original birth certificate.

(2) The procedure for recording a substitute certificate of birth for a person born in Montana and adopted is as follows:

(a) The department shall send copies of the substitute certificate to the local registrar and to the county clerk and recorder.

(b) The local registrar and county clerk and recorder shall immediately enter the substitute birth certificate in its files and forward copies of the original birth record to the department.

(c) The department shall seal original birth records and open them only on order of a court.

(3) On receipt of a certified copy of a court order annulling an adoption, the department shall restore the original certificate to its place in its files and notify the local registrar and county clerk and recorder.

History: (1)En. Sec. 60, Ch. 197, L. 1967; amd. Sec. 52, Ch. 349, L. 1974; amd. Sec. 1, Ch. 162, L. 1977; Sec. 69-4420, R.C.M. 1947; (2), (3)En. Sec. 61, Ch. 197, L. 1967; amd. Sec. 53, Ch. 349, L. 1974; Sec. 69-4421, R.C.M. 1947; R.C.M. 1947, 69-4420, 69-4421; amd. Sec. 9, Ch. 228, L. 1981.

Cross-References

Office of County Clerk, Title 7, ch. 4, part 26.

Uniform Adoption Act, Title 40, ch. 8.

Adoptive parents defined, 40-8-103.

Part 4

Death

Part Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

Disposition and removal of remains, Title 35, ch. 21, part 3.

50-15-401. Death certificate to be filed. A death or fetal death certificate shall be filed with the local registrar prior to interment or other disposition of a dead body. If the place of death is known, the certificate shall be filed within a time frame prescribed by the department. If the place of death or fetal death is unknown, the certificate shall be filed within 24 hours after the occurrence is known.

History: En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(1); amd. Sec. 1, Ch. 502, L. 1989.

50-15-402. Copy to be forwarded to deceased's county of residence. If a state resident dies outside the county of his residence, the clerk and recorder shall send a certified copy of the death certificate to the clerk and recorder of the deceased's county of residence. The copy shall be considered the same as the original.

History: En. Sec. 64, Ch. 197, L. 1967; R.C.M. 1947, 69-4424(2).

Cross-References

Residence — rules for determining, 1-1-215.

Office of County Clerk, Title 7, ch. 4, part 26.

50-15-403. Preparation of certificate when death medically attended. A person in charge of interment shall:

(1) obtain personal data required by the department from persons best qualified to supply the data and enter it on the death or fetal death certificate;

(2) (a) present the death certificate to the physician last in attendance upon the deceased, the coroner having jurisdiction, or the state medical examiner, who shall certify the cause of death according to his best knowledge and belief; or

(b) present the fetal death certificate to the physician, midwife, or other person in attendance, who shall certify the fetal death and supply any pertinent additional medical data;

(3) notify the local registrar if the death or fetal death occurred without attendance or if the physician last in attendance failed to sign the death certificate;

(4) file the death or fetal death certificate with the local registrar within 3 days after the occurrence.

History: En. Sec. 65, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4425; amd. Sec. 28, Ch. 7, L. 1979.

50-15-404. Preparation of certificate when death not medically attended. (1) If the death or fetal death occurred without medical attendance or the physician last in attendance failed to sign the death certificate, the local registrar may complete the certificate on the basis of information received from persons having knowledge of the facts.

(2) If it appears the death or fetal death resulted from other than natural causes, the local registrar shall notify the coroner and the state medical examiner for investigation and certification.

History: En. Sec. 66, Ch. 197, L. 1967; R.C.M. 1947, 66-4426; amd. Sec. 29, Ch. 7, L. 1979.

50-15-405. Permit for disposition of body. (1) No dead body may be disposed of or removed from a registration district until a permit for disposition or removal has been issued by the local registrar.

(2) No permit may be issued until a death certificate, fetal death certificate, or notice of delay as required in subsection (3) of this section has been filed with the local registrar.

(3) If the cause of death or fetal death cannot be determined within 3 days after the occurrence, the attending physician, coroner, or medical examiner shall give the local registrar written notice of the reason for delay so that a permit may be issued for disposition of the body.

History: En. Secs. 67, 68, Ch. 197, L. 1967; R.C.M. 1947, 69-4427, 69-4428; amd. Sec. 30, Ch. 7, L. 1979.

50-15-406. Body brought into state for disposition. If a body is brought into the state for burial or other disposition accompanied by a permit, the local registrar shall endorse the permit and keep a record of it.

History: En. Sec. 69, Ch. 197, L. 1967; R.C.M. 1947, 69-4429.

50-15-407. Disinterment permit. (1) A body, after burial, may be disinterred for reinterment or transport after a permit is obtained from the local registrar of the jurisdiction where the body is interred.

(2) Administration of this section is in the department, which shall adopt rules accordingly. The rules shall provide that, as a precondition to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This section provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act.

History: En. Sec. 1, Ch. 481, L. 1973; amd. Sec. 19, Ch. 187, L. 1977; R.C.M. 1947, 69-4428.1.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Parts 5 and 6 reserved

Part 7

Tumor Registry

50-15-701. Short title. This part may be cited as the "Tumor Registry Act".

History: En. Sec. 1, Ch. 354, L. 1981.

50-15-702. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Hospital" means a facility providing, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, rehabilitation, and care of injured, disabled, or sick persons.

(3) "Medical services" means diagnosis or treatment of illness in a human being by or under the supervision of a physician licensed to practice medicine in Montana.

History: En. Sec. 2, Ch. 354, L. 1981.

50-15-703. Duty to report tumors. A hospital that provides to any person medical services relating to a tumor designated as reportable by the department or a clinical laboratory, as defined in 50-5-101, that is not owned or operated by a hospital and that provides laboratory services relating to such a tumor shall make available to the department all medical and personal information and laboratory results relevant to that person's treatment and condition on forms provided by the department.

History: En. Sec. 3, Ch. 354, L. 1981; amd. Sec. 1, Ch. 12, L. 1985.

50-15-704. Confidentiality. Information received by the department pursuant to this part may not be released unless:

(1) it is in statistical, nonidentifiable form;

(2) the provisions of Title 50, chapter 16, part 5, are satisfied;

(3) the release or transfer is to a person or organization that is qualified to perform data processing or data analysis and that has safeguards against unauthorized disclosure of that information; or

(4) the release or transfer is to a central tumor registry of another state and is of information concerning a person who is residing in that state.

History: En. Sec. 4, Ch. 354, L. 1981; amd. Sec. 27, Ch. 632, L. 1987.

Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-15-705. Tumor registry. The department shall maintain a registry containing the names of all persons reported to it and all other information submitted to the department concerning those persons pursuant to 50-15-703.

History: En. Sec. 5, Ch. 354, L. 1981.

50-15-706. Rules. The department may adopt rules implementing this part, including:

(1) the types of tumors that are reportable; and

(2) the information on each patient having a reportable tumor that must be submitted to the department.

History: En. Sec. 6, Ch. 354, L. 1981.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

CHAPTER 16

HEALTH CARE INFORMATION

Part 1 — General Provisions

50-16-101. Public officials and corporations to furnish information on request.
50-16-102. Information on infant morbidity and mortality.

Part 2 — In-Hospital Medical Staff Committees

50-16-201. Data defined.
50-16-202. Committees to have access to information.
50-16-203. Committee information and proceedings confidential and privileged.
50-16-204. Restrictions on use or publication of information.
50-16-205. Data confidential — inadmissible in judicial proceedings.

Part 3 — Confidentiality of Health Care Information

(Repealed. Sec. 31, Ch. 632, L. 1987)

Part 4 — Health Information Center

50-16-401. Repealed.

Part 5 — Uniform Health Care Information

50-16-501. Short title.
50-16-502. Legislative findings.
50-16-503. Uniformity of application and construction.
50-16-504. Definitions.
50-16-505 through 50-16-510 reserved.
50-16-511. Duty to adopt security safeguards.
50-16-512. Content and dissemination of notice.
50-16-513. Retention of record.
50-16-514 through 50-16-520 reserved.
50-16-521. Health care representatives.
50-16-522. Representative of deceased patient.
50-16-523 and 50-16-524 reserved.
50-16-525. Disclosure by health care provider.
50-16-526. Patient authorization to health care provider for disclosure.
50-16-527. Patient authorization — retention — effective period — exception.
50-16-528. Patient's revocation of authorization for disclosure.
50-16-529. Disclosure without patient's authorization based on need to know.

50-16-530. Disclosure without patient's authorization — other bases.
50-16-531 through 50-16-534 reserved.
50-16-535. When health care information available by compulsory process.
50-16-536. Method of compulsory process.
50-16-537 through 50-16-540 reserved.
50-16-541. Requirements and procedures for patient's examination and copying.
50-16-542. Denial of examination and copying.
50-16-543. Request for correction or amendment.
50-16-544. Procedure for adding correction, amendment, or statement of disagreement.
50-16-545. Dissemination of corrected or amended information or statement of disagreement.
50-16-546 through 50-16-550 reserved.
50-16-551. Criminal penalty.
50-16-552. Civil enforcement.
50-16-553. Civil remedies.

Part 6 — Government Health Care Information

50-16-601. Short title.
50-16-602. Definitions.
50-16-603. Confidentiality of health care information.
50-16-604. Secondary release of health care information.
50-16-605. Judicial, legislative, and administrative proceedings — testimony.
50-16-606. Correlation with Uniform Health Care Information Act.
50-16-607 through 50-16-610 reserved.
50-16-611. Penalty.

Part 7 — Report of Exposure to Infectious Disease

50-16-701. Definitions.
50-16-702. Report of unprotected exposure to disease.
50-16-703. Notification of precautions after unprotected exposure to infectious disease.
50-16-704. Confidentiality — penalty for violation — immunity from liability.
50-16-705. Rulemaking authority.

Parts 8 and 9 reserved

Part 10 — AIDS Education and Prevention

50-16-1001. Short title.
50-16-1002. Statement of purpose.
50-16-1003. Definitions.
50-16-1004 through 50-16-1006 reserved.
50-16-1007. Testing — counseling — informed consent — penalty.
50-16-1008. Testing of donors of organs, tissues, and semen required — penalty.
50-16-1009. Confidentiality of records — notification of contacts — penalty for unlawful disclosure.
50-16-1010 through 50-16-1012 reserved.
50-16-1013. Civil remedy.

Chapter Cross-References

Public participation in governmental operations, Art. II, sec. 9, Mont. Const.; Title 2, ch. 3.

Right of privacy, Art. II, sec. 10, Mont. Const.

Duty to report cases of communicable disease, 37-2-301.

Gunshot or stab wounds to be reported, 37-2-302.

Immunity from liability, 37-2-302.

Report to Department of Justice by physician, 37-2-311.

Physician's immunity from liability, 37-2-312.

Part 1

General Provisions

50-16-101. Public officials and corporations to furnish information on request. On request, employees and officers of firms and corporations and public officials shall furnish public health information to the department of health and environmental sciences.

History: En. Sec. 14, Ch. 197, L. 1967; R.C.M. 1947, 69-4114.

50-16-102. Information on infant morbidity and mortality. (1) If information on infant morbidity and mortality will be used to reduce those problems, data relating to the condition and treatment of any person may be given to the department of health and environmental sciences, Montana medical association, an allied society of the Montana medical association, a committee of a nationally organized medical society or research group, or an in-hospital staff committee.

(2) A person furnishing information under subsection (1) of this section is immune from suit for damages arising from the release of the data or publication of findings and conclusions based on the data.

(3) Data supplied under subsection (1) of this section may be used or published only for advancing medical research or medical education in the interest of reducing infant morbidity or mortality. A summary of studies based on the data may be released for general publication.

(4) The identity of persons whose condition or treatment was studied is confidential and may not be revealed under any circumstances.

(5) Any data supplied or studies based on this data are privileged communications and may not be used as evidence in any legal proceeding. Any attempt to use or offer to supply the data or studies, without consent of the person treated or his legal representative, is prejudicial error resulting in a mistrial.

History: En. Sec. 15, Ch. 197, L. 1967; R.C.M. 1947, 69-4115.

Part 2

In-Hospital Medical Staff Committees

50-16-201. Data defined. As used in this part, “data” means written reports, notes, or records of tissue committees or other medical staff committees in connection with the professional training, supervision, or discipline of the medical staff of hospitals.

History: En. Sec. 4, Ch. 104, L. 1969; R.C.M. 1947, 69-6304.

50-16-202. Committees to have access to information. It is in the interest of public health and patient medical care that in-hospital medical staff committees have access to the records, information, and other data relating to the condition and treatment of patients in such hospital to study and evaluate for the purpose of evaluating matters relating to the care and treatment of such patients for research purposes and for the purpose of reducing morbidity or mortality and obtaining statistics and information relating to the prevention and treatment of diseases, illnesses, and injuries. To carry out such purposes, any hospital, its agents and employees may provide medical records, information, or other data relating to the condition and treatment of any patient in said hospital to any in-hospital medical staff committee.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).

50-16-203. Committee information and proceedings confidential and privileged. All such records, data, and information shall be confidential and privileged to said committee and the members thereof, as though such hospital patients were the patients of the members of such committee. All proceedings and in-hospital records and reports of such medical staff committees shall be confidential and privileged.

History: En. Sec. 1, Ch. 104, L. 1969; R.C.M. 1947, 69-6301(part).

Cross-References

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

50-16-204. Restrictions on use or publication of information. Such in-hospital medical staff committees shall use or publish information from such material only for the purpose of evaluating matters of medical care, therapy, and treatment for research and statistical purposes. Neither such in-hospital medical staff committee nor the members, agents, or employees thereof shall disclose the name or identity of any patient whose records have been studied in any report or publication of findings and conclusions of such committee, but such in-hospital medical staff committee, its members, agents, or employees shall protect the identity of any patient whose condition or treatment has been studied and shall not disclose or reveal the name of any such in-hospital patient.

History: En. Sec. 2, Ch. 104, L. 1969; R.C.M. 1947, 69-6302.

50-16-205. Data confidential — inadmissible in judicial proceedings. All data shall be confidential and shall not be admissible in evidence in any judicial proceeding, but this section shall not affect the admissibility in evidence of records dealing with the patient's hospital care and treatment.

History: En. Sec. 3, Ch. 104, L. 1969; R.C.M. 1947, 69-6303.

Cross-References

Montana Rules of Evidence, Title 26, ch. 10.

Part 3

Confidentiality of Health Care Information (Repealed. Sec. 31, Ch. 632, L. 1987)

Part Compiler's Comments

Histories of Repealed Sections:

50-16-301. En. Sec. 1, Ch. 578, L. 1979.

50-16-302. En. Sec. 2, Ch. 578, L. 1979.

50-16-303. En. Sec. 6, Ch. 578, L. 1979.

50-16-304. En. Sec. 8, Ch. 578, L. 1979.

50-16-305. En. Sec. 7, Ch. 578, L. 1979.

50-16-306 through 50-16-310 reserved.

50-16-311. En. Sec. 3, Ch. 578, L. 1979; amd. Sec. 1, Ch. 725, L. 1985.

50-16-312. En. Sec. 4, Ch. 578, L. 1979.

50-16-313. En. Sec. 4, Ch. 578, L. 1979.

50-16-314. En. Sec. 5, Ch. 578, L. 1979.

Part 4

Health Information Center

50-16-401. Repealed. Sec. 1, Ch. 66, L. 1987.
History: En. Sec. 1, Ch. 628, L. 1983.

Part 5

Uniform Health Care Information

Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

50-16-501. Short title. This part may be cited as the "Uniform Health Care Information Act".
History: En. Sec. 1, Ch. 632, L. 1987.

50-16-502. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not

improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

History: **En. Sec. 2, Ch. 632, L. 1987.**

50-16-503. Uniformity of application and construction. This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

History: **En. Sec. 3, Ch. 632, L. 1987.**

50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply:

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider, to determine compliance with:

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider; or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of critical, poor, fair, good, excellent, or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider, including medical or psychological diagnosis, treatment, evaluation, advice, or other services that affect the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not

include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(8) "Institutional review board" means a board, committee, or other group formally designated by an institution or authorized under federal or state law to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain", as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

History: En. Sec. 4, Ch. 632, L. 1987.

Cross-References

Government health care information — definition of health care information, 50-16-602.

50-16-505 through 50-16-510 reserved.

50-16-511. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

History: En. Sec. 21, Ch. 632, L. 1987.

50-16-512. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at ...."

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

History: En. Sec. 18, Ch. 632, L. 1987.

50-16-513. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

History: En. Sec. 22, Ch. 632, L. 1987.

Cross-References

Records and reports required of health care facilities — confidentiality, 50-5-106.

Maintenance and confidentiality of records concerning developmentally disabled persons, 53-20-161.

50-16-514 through 50-16-520 reserved.

50-16-521. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

History: En. Sec. 19, Ch. 632, L. 1987.

50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part. If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for him.

History: En. Sec. 20, Ch. 632, L. 1987; amd. Sec. 1, Ch. 657, L. 1989.

50-16-523 and 50-16-524 reserved.

50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529 and 50-16-530 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

History: En. Sec. 5, Ch. 632, L. 1987; amd. Sec. 2, Ch. 657, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Doctor-patient privilege, 26-1-805.

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

Gunshot or stab wounds — reporting by health care practitioners, 37-2-302.

Release of information by physician concerning minor, 41-1-403.

Records and reports required of health care facilities — confidentiality, 50-5-106.

Confidentiality under Tumor Registry Act, 50-15-704.

Unauthorized divulgence of serological test information, 50-19-108.

Maintenance and confidentiality of records concerning developmentally disabled persons, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

Records of chemically dependent persons, intoxicated persons, and family members, 53-24-306.

50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient;

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

History: En. Sec. 6, Ch. 632, L. 1987.

Cross-References

Privileges, Rules 501 through 505, M.R.Ev. (see Title 26, ch. 10).

50-16-527. Patient authorization — retention — effective period — exception. (1) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is revoked under 50-16-528. Health care information disclosed under such an authorization is otherwise subject to this part. An authorization written after October 1, 1987, becomes invalid after the expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection relates only to information concerning the claimant's condition. This authorization is effective only as long as the claimant is claiming benefits.

History: En. Sec. 7, Ch. 632, L. 1987; amd. Sec. 13, Ch. 333, L. 1989.

50-16-528. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

History: En. Sec. 8, Ch. 632, L. 1987.

50-16-529. Disclosure without patient's authorization based on need to know. A health care provider may disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education; to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; for assisting the health care provider in the delivery of health care; or to a third-party health care payor who requires health care information and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

(e) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(7) to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the audit or to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider;

(8) to an official of a penal or other custodial institution in which the patient is detained; and

(9) to any contact, as defined in 50-16-1003, if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the contact or any other individual.

History: En. Sec. 9, Ch. 632, L. 1987; amd. Sec. 3, Ch. 657, L. 1989; amd. Sec. 6, Ch. 544, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (9) concerning disclosure to avoid or minimize danger. Amendment effective July 1, 1991.

Cross-References

Duty of mental health professionals to warn of violent patients, 27-1-1102.

Nonliability for peer review, 37-2-201.

Pharmacists not liable for peer review, 37-7-1101.

Release of information by physician concerning minor, 41-1-403.

Maintenance and confidentiality of records concerning developmentally disabled persons, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

50-16-530. Disclosure without patient's authorization — other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the division of crime control for information under 53-9-104(2)(b); or

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536.

History: En. Sec. 10, Ch. 632, L. 1987; amd. Sec. 1, Ch. 68, L. 1989.

50-16-531 through 50-16-534 reserved.

50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed his physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (i);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) a court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy interest; or

(j) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2) Nothing in this part authorizes the disclosure of health care information by compulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

History: En. Sec. 11, Ch. 632, L. 1987; amd. Sec. 4, Ch. 657, L. 1989.

Cross-References

Government health care information — legal proceedings, 50-16-605.

50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535 (1)(b), (1)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535 (1)(i), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider.

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535 (1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535 (1)(i), that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, where authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50-16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) Where access to health care information is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary. In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50-16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed the health care provider's actual cost for providing the information, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

History: En. Sec. 12, Ch. 632, L. 1987; amd. Sec. 5, Ch. 657, L. 1989; amd. Sec. 44, Ch. 16, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (4), after "health care", inserted "information".

50-16-537 through 50-16-540 reserved.

50-16-541. Requirements and procedures for patient's examination and copying. (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination during regular business hours or provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

(c) if the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, he is not required to create a new record or reformulate an existing record to make the information available in the requested form. The health care provider may charge a reasonable fee, not to exceed the health care provider's actual cost, for providing the health care information and is not required to permit examination or copying until the fee is paid.

History: **En. Sec. 13, Ch. 632, L. 1987.**

50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

(e) the health care information might disclose birth out of wedlock or provide information from which knowledge of birth out of wedlock might be obtained and which information is protected from disclosure pursuant to 50-15-206;

(f) the health care provider obtained the information from a person other than the patient; or

(g) access to the health care information is otherwise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to a mental health facility; or

(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information.

(3) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (1)(c), he shall permit examination and copying of the record by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

History: En. Sec. 14, Ch. 632, L. 1987; amd. Sec. 6, Ch. 657, L. 1989.

50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

History: En. Sec. 15, Ch. 632, L. 1987.

50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

History: En. Sec. 16, Ch. 632, L. 1987.

50-16-545. Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

History: En. Sec. 17, Ch. 632, L. 1987.

50-16-546 through 50-16-550 reserved.

50-16-551. Criminal penalty. (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in violation of this part, health care information maintained by a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certification under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

History: En. Sec. 23, Ch. 632, L. 1987.

Cross-References

Government health care information — penalty, 50-16-611.

Unauthorized divulgence of serological test information, 50-19-108.

50-16-552. Civil enforcement. The attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

History: En. Sec. 24, Ch. 632, L. 1987.

50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

History: En. Sec. 25, Ch. 632, L. 1987.

Part 6

Government Health Care Information

50-16-601. Short title. This part may be cited as the "Government Health Care Information Act".

History: En. Sec. 1, Ch. 481, L. 1989.

50-16-602. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Health care information" means information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of an individual, including one who is deceased, and relates to that individual's health care or status. The term includes any record of disclosures of health care information and any information about an individual received pursuant to state law or rules relating to communicable disease. The term does not include vital statistics information gathered under Title 50, chapter 15.

(3) "Local board" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2, part 1.

(4) "Local health officer" means a county, city, city-county, or district health officer appointed by a local board.

History: En. Sec. 2, Ch. 481, L. 1989.

Cross-References

Uniform health care information — definition of health care information, 50-16-504.

50-16-603. Confidentiality of health care information. Health care information in the possession of the department, a local board, a local health officer, or their authorized representatives may not be released except:

(1) for statistical purposes, if no identification of individuals can be made from the information released;

(2) when the health care information pertains to a person who has given written consent to the release and has specified the type of information to be released and the person or entity to whom it may be released;

(3) to medical personnel in a medical emergency as necessary to protect the health, life, or well-being of the named person;

(4) as allowed by Title 50, chapters 17 and 18;

(5) to another state or local public health agency, including those in other states, whenever necessary to continue health services to the named person or to undertake public health efforts to prevent or interrupt the transmission of a communicable disease;

(6) in the case of a minor, as required by 41-3-201 or pursuant to an investigation under 41-3-202. If the health care information is required in a subsequent court proceeding involving child abuse, the information may be disclosed only in camera and documents containing the information must be sealed by the court upon conclusion of the proceedings.

(7) to medical personnel, the department, a local health officer or board, or a district court when necessary to implement or enforce state statutes or state or local health rules concerning the prevention or control of diseases designated as reportable pursuant to 50-1-202, if the release does not conflict with any other provision contained in this part.

History: En. Sec. 3, Ch. 481, L. 1989.

Cross-References

Uniform health care information, Title 50, ch. 16, part 5.

50-16-604. Secondary release of health care information. Information released pursuant to 50-16-603 may not be released by the person or entity it is released to unless the release conforms to the requirements of 50-16-603.

History: En. Sec. 4, Ch. 481, L. 1989.

50-16-605. Judicial, legislative, and administrative proceedings — testimony. (1) An officer or employee of the department may not be examined in a judicial, legislative, administrative, or other proceeding about the existence or content of records containing individually identifiable health care information, including the results of investigations, unless all individuals whose names appear in the records give written consent to the release of information identifying them.

(2) Subsection (1) does not apply if the health care information is to be released pursuant to 50-16-603(7).

History: En. Sec. 5, Ch. 481, L. 1989.

Cross-References

Uniform health care information — when available by compulsory process, 50-16-535.

50-16-606. Correlation with Uniform Health Care Information Act. Health care information in the possession of a local board, local health officer, or the department because a health care provider employed by any of these entities provided health care to a patient, either individually or at a public health center or other publicly owned health care facility, is subject to the Uniform Health Care Information Act and not subject to this part.

History: En. Sec. 1, Ch. 432, L. 1991.

Compiler's Comments

Effective Date: Section 3, Ch. 432, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 15, 1991.

Cross-References

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

50-16-607 through 50-16-610 reserved.

50-16-611. Penalty. A person who knowingly violates the provisions of this part is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $10,000, be imprisoned in the county jail not less than 3 months or more than 1 year, or both.

History: En. Sec. 6, Ch. 481, L. 1989.

Cross-References

Uniform health care information — criminal penalty, 50-16-551.

Part 7

Report of Exposure to Infectious Disease

Part Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Duty to report communicable disease, 37-2-301.

50-16-701. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(2) "Health care facility" means a health care facility as defined in 50-5-101.

(3) "Infectious disease" means a communicable disease designated by department rule as transmittable through an unprotected exposure.

(4) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless.

(5) "Unprotected exposure" means exposure of a person to an infectious disease in a manner defined by department rule as likely to allow transmis-

sion of the disease, including but not limited to mouth-to-mouth resuscitation and commingling of the blood or body fluids of the person and a patient.

History: En. Sec. 1, Ch. 390, L. 1989.

50-16-702. Report of unprotected exposure to disease. (1) A report may be filed, as provided in subsection (2), by a person:

(a) employed by or acting as a volunteer with a public or private organization that provides emergency services to the public, including but not limited to a law enforcement officer, firefighter, emergency medical technician, corrections officer, or ambulance service attendant; and

(b) who, in his official capacity with the public or private organization, attends or assists in transporting a patient to a health care facility and believes he has sustained an unprotected exposure.

(2) A person who qualifies in subsection (1) may submit to the health care facility, on a form prescribed by the department, a report of unprotected exposure that contains his name and other information required by the department, including a description of the unprotected exposure.

(3) If the exposure described in the report occurred in a manner that may allow infection by HIV, as defined in 50-16-1003, by a mode of transmission recognized by the centers for disease control, then submission of the report to the health care facility constitutes a request to the patient's physician to seek consent for performance of an HIV-related test pursuant to 50-16-1007(10).

History: En. Sec. 2, Ch. 390, L. 1989; amd. Sec. 7, Ch. 544, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (3) providing that report is request for performance of HIV-related test in certain circumstances. Amendment effective July 1, 1991.

50-16-703. Notification of precautions after unprotected exposure to infectious disease. (1) After a patient is transported to a health care facility, a physician shall inform the health care facility if:

(a) the physician determines that the transported patient has an infectious disease;

(b) a report of unprotected exposure to that patient has been filed; and

(c) the physician believes the unprotected exposure is capable of transmitting the infectious disease.

(2) The health care facility shall orally notify within 48 hours after the time of diagnosis and notify in writing within 72 hours after diagnosis the person who filed the report in 50-16-702 of the disease to which he may have been exposed and the appropriate medical precautions and treatment that the exposed person needs to take.

History: En. Sec. 3, Ch. 390, L. 1989.

50-16-704. Confidentiality — penalty for violation — immunity from liability. (1) The names of the person who suffered the unprotected exposure and the person diagnosed as having an infectious disease may not be released to anyone, except as required by department rule concerning reporting of communicable disease or as allowed by Title 50, chapter 16, part 5.

(2) A person who violates the provisions of this section is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more

than $10,000, imprisoned in the county jail not less than 3 months or more than 1 year, or both.

(3) A health care facility, a representative of a health care facility, or a physician may not be held jointly or severally liable for providing the notification required by 50-16-703 when the notification is made in good faith or for failing to provide the notification if good faith attempts to contact a person filing a report of unprotected exposure are unsuccessful.

History: En. Sec. 5, Ch. 390, L. 1989.

Cross-References

Physician's immunity from liability, 37-2-312.

50-16-705. Rulemaking authority. The department shall adopt rules to:

(1) define what constitutes an unprotected exposure to an infectious disease;

(2) specify the infectious diseases subject to this part;

(3) specify the information about an unprotected exposure that must be included in a report of unprotected exposure; and

(4) specify recommended medical precautions and treatment for each infectious disease subject to this part.

History: En. Sec. 4, Ch. 390, L. 1989.

Parts 8 and 9 reserved

Part 10

AIDS Education and Prevention

Part Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

Uniform health care information, Title 50, ch. 16, part 5.

50-16-1001. Short title. This part may be cited as the "AIDS Prevention Act".

History: En. Sec. 1, Ch. 614, L. 1989.

50-16-1002. Statement of purpose. (1) The legislature recognizes that the epidemic of human immunodeficiency virus (HIV) infection, the causative agent of acquired immune deficiency syndrome (AIDS), and related medical conditions constitutes a serious danger to the public health and welfare. In the absence of a vaccine or a cure and because of the sexual and intravenous drug use behaviors by which the virus is predominately spread, control of the epidemic is dependent on the education of those infected or at risk for infection.

(2) It is the intent of the legislature that education directed at preventing the transmission of HIV be provided to those infected and at risk of infection and to entreat such persons to come forward to determine their HIV infection status and to obtain appropriate education.

History: En. Sec. 2, Ch. 614, L. 1989.

50-16-1003. Definitions. As used in this part, the following definitions apply:

(1) "AIDS" means acquired immune deficiency syndrome as further defined by the department in accordance with standards promulgated by the centers for disease control of the United States public health service.

(2) "Contact" means:

(a) an individual identified by the subject of an HIV-related test as a past or present sexual partner or as a person with whom the subject has shared hypodermic needles or syringes; or

(b) any other person who has been exposed to the test subject in a manner, voluntary or involuntary, that may allow HIV transmission in accordance with modes of transmission recognized by the centers for disease control of the United States public health service.

(3) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(4) "HIV" means the human immunodeficiency virus, identified as the causative agent of AIDS, and all HIV and HIV-related viruses that damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(5) "HIV-related condition" means a chronic disease resulting from infection with HIV, including but not limited to AIDS and asymptomatic seropositivity for HIV.

(6) "HIV-related test" means a test approved by the federal food and drug administration, including but not limited to an enzyme immunoassay and a western blot, that is designed to detect the presence of HIV or antibodies to HIV.

(7) "Health care facility" means a health care institution, private or public, including but not limited to a hospital, nursing home, clinic, blood bank, blood center, sperm bank, or laboratory.

(8) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incapacitated or, in the case of a minor, a person who has legal custody of the minor.

(10) "Local board" means a county, city, city-county, or district board of health.

(11) "Local health officer" means a county, city, city-county, or district health officer appointed by the local board.

(12) "Next of kin" means an individual who is a parent, adult child, grandparent, adult sibling, or legal spouse of a person.

(13) "Person" means an individual, corporation, organization, or other legal entity.

(14) "Posttest counseling" means counseling, conducted at the time the HIV-related test results are given, and includes, at a minimum, written materials provided by the department.

(15) "Pretest counseling" means the provision of counseling to the subject prior to conduct of an HIV-related test, including, at a minimum, written materials developed and provided by the department.

(16) "Release of test results" means a written authorization for disclosure of HIV-related test results that:

(a) is signed and dated by the person tested or the person authorized to act for the person tested; and

(b) specifies the nature of the information to be disclosed and to whom disclosure is authorized.

(17) "Significant other" means an individual living in a current spousal relationship with another individual but who is not legally a spouse of that individual.

(18) (a) "Written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf, and that includes at least the following:

(i) an explanation of the test, including its purpose, potential uses, limitations, and the meaning of its results;

(ii) an explanation of the procedures to be followed for confidentiality, blood drawing, and counseling, including notification that the test is voluntary and that consent may be withdrawn at any time until the blood sample is taken;

(iii) an explanation of whether and to whom the subject's name and test results may be disclosed;

(iv) a statement that the test may be obtained anonymously if the subject wishes;

(v) the name and address of a health care provider whom the subject approves to receive the subject's test results and to provide the subject with posttest counseling; and

(vi) if the consent is for a test being performed as part of an application for insurance, a statement that only a positive test result will be reported to the designated health care provider and that negative test results may be obtained by the subject from the insurance company.

(b) The department shall develop a form agreement that may be used for purposes of this subsection.

History: En. Sec. 3, Ch. 614, L. 1989; amd. Sec. 1, Ch. 544, L. 1991.

Compiler's Comments

1991 Amendment: In definition of contact inserted (b) concerning a person exposed to the test subject in a manner allowing HIV transmission; in definition of HIV-related test substituted "test approved by the federal food and drug administration" for "laboratory test"; in definition of health care provider substituted present text concerning person authorized to provide health care for "physician, nurse, paramedic, psychologist, dentist, public health department agent, or other person providing medical, nursing, psychological, or other health care services of any kind"; inserted definitions of local board, local health officer, and next of kin; in definition of pretest counseling, after "provision of", substituted "counseling" for "written materials" and after "test" inserted "including, at a minimum"; in definition of release of test results, in (a) after "dated", inserted "by the person tested or the person authorized to act for the person tested"; inserted definition of significant other; in definition of written informed consent, in (a) after "guardian", inserted "or, if there is no legal guardian and the subject is unconscious or otherwise mentally incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf, and", at end of (a)(ii) inserted "until the blood sample is taken", at beginning of (a)(iii) substituted "an explanation" for "a discussion", and inserted (a)(v) concerning name and address of health care provider and (a)(vi) concerning test performed as part of insurance application; and made minor changes in style. Amendment effective July 1, 1991.

50-16-1004 through 50-16-1006 reserved.

50-16-1007. Testing — counseling — informed consent — penalty. (1) An HIV-related test may be ordered only by a health care provider and only after receiving the written informed consent of:

(a) the subject of the test;

(b) the subject's legal guardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated;

(ii) there is no legal guardian;

(iii) there are medical indications of an HIV-related condition; and

(iv) the test is advisable in order to determine the proper course of treatment of the subject; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in a hospital; and

(ii) the circumstances in subsections (1)(c)(i) through (1)(c)(iv) exist.

(2) When a health care provider orders an HIV-related test, he also certifies that informed consent has been received prior to ordering an HIV-related test.

(3) Before the subject of the test executes an informed consent agreement, the health care provider ordering the test or his designee must give pretest counseling to:

(a) the subject;

(b) the subject's legal guardian;

(c) the subject's next of kin or significant other if:

(i) the subject is unconscious or otherwise mentally incapacitated; and

(ii) there is no guardian; or

(d) the subject's next of kin or significant other or the person, if any, designated by the subject in hospital records to act on the subject's behalf if:

(i) the subject is in the hospital; and

(ii) the circumstances in subsections (1)(c)(i) and (1)(c)(ii) exist.

(4) A health care provider who does not provide HIV-related tests on an anonymous basis shall inform each person who wishes to be tested that anonymous testing is available at one of the counseling-testing sites established by the department, or elsewhere.

(5) The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate,

as part of his written informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider shall inform the subject or the subject's representative of the results in person.

(6) At the time the subject of a test or the subject's representative is given the test results, the health care provider or the provider's designee shall give the subject or the subject's representative posttest counseling.

(7) If a test is performed as part of an application for insurance, the insurance company must ensure that:

(a) negative results can be obtained by the subject or his representative upon request; and

(b) positive results are returned to the health care provider designated by the subject or his representative.

(8) A minor may consent or refuse to consent to be the subject of an HIV-related test, pursuant to 41-1-402.

(9) Subsections (1) through (6) do not apply to:

(a) the performance of an HIV-related test by a health care provider or health care facility that procures, processes, distributes, or uses a human body part donated for a purpose specified under Title 72, chapter 17, if the test is necessary to assure medical acceptability of the gift for the purposes intended;

(b) the performance of an HIV-related test for the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;

(c) the performance of an HIV-related test when:

(i) the subject of the test is unconscious or otherwise mentally incapacitated;

(ii) there are medical indications of an HIV-related condition;

(iii) the test is advisable in order to determine the proper course of treatment of the subject; and

(iv) none of the individuals listed in subsection (1)(b), (1)(c), or (1)(d) exists or is available within a reasonable time after the test is determined to be advisable; or

(d) the performance of an HIV-related test conducted pursuant to 50-18-107 or 50-18-108, with the exception that the pretest and posttest counseling must still be given.

(10) (a) If an agent or employee of a health care facility, a health care provider with privileges at the health care facility, or a person providing emergency services who is described in 50-16-702(1) has been voluntarily or involuntarily exposed to a patient in a manner that may allow infection by HIV by a mode of transmission recognized by the centers for disease control of the United States public health service, the physician of the patient shall, upon request of the exposed person, notify the patient of the exposure and seek written informed consent in accordance with guidelines of the centers for disease control for an HIV-related test of the patient. If written informed consent cannot be obtained, the health care facility, in accordance with the infectious disease exposure guidelines of the health care facility, may, without the consent of the patient, conduct the test on previously drawn blood or previously collected bodily fluids to determine if the patient is in fact infected. A health care facility is not required to perform a test authorized in this

subsection. If a test is conducted pursuant to this subsection, the health care facility shall inform the patient of the results and provide the patient with posttest counseling. The patient may not be charged for a test performed pursuant to this subsection. The results of a test performed pursuant to this subsection may not be made part of the patient's record and are subject to 50-16-1009(1).

(b) For the purposes of this subsection, "written informed consent" means an agreement in writing that is freely executed by the subject of an HIV-related test, by the subject's legal guardian, or, if there is no legal guardian and the subject is incapacitated, by the subject's next of kin, significant other, or a person designated by the subject in hospital records to act on the subject's behalf.

(11) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of $1,000 or imprisonment for up to 6 months, or both.

History: En. Sec. 4, Ch. 614, L. 1989; amd. Sec. 2, Ch. 544, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (1) substituted "An HIV-related test may be ordered only by a health care provider and only after" for "A person may not request an HIV-related test without first"; inserted (1)(c) concerning consent of next of kin or significant other; inserted (1)(d) concerning consent of next of kin, significant other, or the designated person; in (2) substituted present text concerning certifying informed consent for "A health care provider shall certify in writing that informed consent has been received prior to requesting testing. Testing may only be requested by a health care provider"; in (3), at end, inserted "the health care provider ordering the test or his designee must give pretest counseling to"; inserted (3)(a) requiring counseling for the subject of the test; inserted (3)(c) requiring counseling for the subject's next of kin or significant other; inserted (3)(d) requiring counseling for the subject's next of kin, significant other, or the designated person; in (4), at end, inserted "or elsewhere"; in (5), at beginning, substituted "The subject of an HIV-related test or any of the subject's representatives authorized by subsection (1) to act in the subject's stead shall designate, as part of his written informed consent, a health care provider to receive the results of an HIV-related test. The designated health care provider" for "The results of an HIV-related test must be given to the health care provider designated by the subject, who" and in second sentence, after "subject", inserted "or the subject's representative"; in (6), in two places, inserted "or the subject's representative" and after "test results" inserted "the health care provider or the provider's designee"; inserted (7) concerning a test performed as part of an insurance application; in (9) changed subsection reference; inserted (9)(c) concerning performance of test under certain conditions; inserted (10)(a) concerning exposure of certain persons to potential HIV infection; inserted (10)(b) defining informed written consent; and made minor changes in style. Amendment effective July 1, 1991.

50-16-1008. Testing of donors of organs, tissues, and semen required — penalty. (1) Prior to donation of an organ, semen, or tissues, HIV-related testing of a prospective donor, in accordance with nationally accepted standards adopted by the department by rule, is required unless the transplantation of an indispensable organ is necessary to save a patient's life and there is not sufficient time to perform an HIV-related test.

(2) A knowing or purposeful violation of this section is a misdemeanor punishable by a fine of up to $1,000 or imprisonment of up to 6 months, or both.

History: En. Sec. 5, Ch. 614, L. 1989; amd. Sec. 3, Ch. 544, L. 1991.

Compiler's Comments

1991 Amendment: Near middle of (1), after "donor", inserted "in accordance with nationally accepted standards adopted by the department by rule"; and made minor change in style. Amendment effective July 1, 1991.

Cross-References

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-16-1009. Confidentiality of records — notification of contacts — penalty for unlawful disclosure. (1) Except as provided in subsection (2), a person may not disclose or be compelled to disclose the identity of a subject of an HIV-related test or the results of a test in a manner that permits identification of the subject of the test, except to the extent allowed under the Uniform Health Care Information Act, Title 50, chapter 16, part 5.

(2) A local board, local health officer, or the department may disclose the identity of the subject of an HIV-related test or the test results only to the extent allowed by the Government Health Care Information Act, Title 50, chapter 16, part 6, unless it is in possession of that information because a health care provider employed by it provided health care to the subject, in which case the Uniform Health Care Information Act governs the release of that information.

(3) If a health care provider informs the subject of an HIV-related test that the results are positive, the provider shall encourage the subject to notify persons who are potential contacts. If the subject is unable or unwilling to notify all contacts, the health care provider may ask the subject to disclose voluntarily the identities of the contacts and to authorize notification of those contacts by a health care provider. A notification may state only that the contact may have been exposed to HIV and may not include the time or place of possible exposure or the identity of the subject of the test.

(4) A person who discloses or compels another to disclose confidential health care information in violation of this section is guilty of a misdemeanor punishable by a fine of $1,000 or imprisonment for 1 year, or both.

History: En. Sec. 6, Ch. 614, L. 1989; amd. Sec. 4, Ch. 544, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (1) inserted exception clause; inserted (2) concerning disclosure of subject of test; in (3), at end of first sentence, substituted "who are potential contacts" for "with whom there has been a contact capable of spreading HIV"; and inserted (4) providing penalty for unauthorized disclosure. Amendment effective July 1, 1991.

50-16-1010 through 50-16-1012 reserved.

50-16-1013. Civil remedy. (1) A person aggrieved by a violation of this part has a right of action in the district court and may recover for each violation:

(a) against a person who negligently violates a provision of this part, damages of $5,000 or actual damages, whichever is greater;

(b) against a person who intentionally or recklessly violates a provision of this part, damages of $20,000 or actual damages, whichever is greater;

(c) reasonable attorney fees; and

(d) other appropriate relief, including injunctive relief.

(2) An action under this section must be commenced within 3 years after the cause of action accrues.

(3) The department may maintain a civil action to enforce this part in which the court may order any relief permitted under subsection (1).

(4) Nothing in this section limits the rights of a subject of an HIV-related test to recover damages or other relief under any other applicable law or cause of action.

(5) Nothing in this part may be construed to impose civil liability or criminal sanctions for disclosure of an HIV-related test result in accordance with any reporting requirement for a diagnosed case of AIDS or an HIV-related condition by the department or the centers for disease control of the United States public health service.

History: En. Sec. 7, Ch. 614, L. 1989; amd. Sec. 5, Ch. 544, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(a) increased damages from $1,000 to $5,000; and in (1)(b) increased damages from $5,000 to $20,000. Amendment effective July 1, 1991.

Cross-References

Statutes of Limitations, Title 27, ch. 2.

CHAPTER 17

TUBERCULOSIS CONTROL

Part 1 — General Provisions

50-17-101. Policy of state.
50-17-102. Definitions.
50-17-103. Powers and duties of department.
50-17-104. Facilities for diagnosis and treatment of tuberculosis.
50-17-105. Application to require examination or treatment for tuberculosis.
50-17-106. Hearing on the application.
50-17-107. Adjudication of application.
50-17-108. Commitment to hospital on noncompliance with order.
50-17-109. Order of commitment — warrant for transportation.
50-17-110. Confinement in hospital — submission to treatment.
50-17-111. Transfer of person to another hospital.
50-17-112. Procedure to obtain release from commitment.
50-17-113. Voluntary release.
50-17-114. Payment of costs, expenses, and fees.
50-17-115. Emergency detainment — petition — detention.

Part 1

General Provisions

Part Cross-References

Municipal power to establish detention hospital to prevent spread of disease, 7-34-4101.

Montana State Hospital, 53-21-601.

Quarantine for tuberculosis control in livestock, Title 81, ch. 2, part 1.

50-17-101. Policy of state. It is the public policy of the state to:

(1) protect persons from the danger of tuberculosis;

(2) provide and maintain a comprehensive program for the prevention, abatement, and adequate control working toward eradication of the disease;

(3) cooperate with other state agencies and the federal government in carrying out these objectives.

History: En. Sec. 24, Ch. 197, L. 1967; R.C.M. 1947, 69-4301; amd. Sec. 1, Ch. 61, L. 1985.

50-17-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Approved course of treatment" means a course of treatment for tuberculosis which includes medical treatment prescribed by a physician and consistent with accepted medical standards, as well as appropriate followup to assure public health and safety as set out in the rules of the department.

(2) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(3) "Local board" means a city, county, city-county, or district board of health.

(4) "Tuberculosis" means a disease caused by mycobacterium tuberculosis.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2), (3)En. Sec. 25, Ch. 197, L. 1967; Sec. 69-4302, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-4302; amd. Sec. 2, Ch. 61, L. 1985.

50-17-103. Powers and duties of department. (1) The department shall:

(a) accept, spend, and distribute federal funds available for tuberculosis control;

(b) collect and study data on the incidence of tuberculosis;

(c) adopt rules for the determination and control of tuberculosis.

(2) The department may, if appropriate, contract with federal agencies or other state agencies for receipt and expenditure of federal funds.

History: En. Secs. 26, 27, Ch. 197, L. 1967; amd. Secs. 45, 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4303, 69-4304; amd. Sec. 3, Ch. 61, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Department empowered to control communicable diseases, 50-1-202.

50-17-104. Facilities for diagnosis and treatment of tuberculosis. (1) The Montana state hospital shall maintain facilities for inhospital treatment of tuberculosis.

(2) The charge for care, treatment, and maintenance at the Montana state hospital shall be at the rate fixed by law.

History: En. Secs. 39, 40, Ch. 197, L. 1967; amd. Secs. 46, 47, Ch. 349, L. 1974; R.C.M. 1947, 69-4316(part), 69-4317; amd. Sec. 9, Ch. 361, L. 1983; amd. Sec. 4, Ch. 61, L. 1985.

Cross-References

Montana State Hospital, Title 53, ch. 21, part 6.

50-17-105. Application to require examination or treatment for tuberculosis. (1) The department or a local board may apply for an order from the district court if a person is reasonably suspected to have or to have been exposed to tuberculosis, upon request of:

(a) a physician legally authorized to practice medicine in the state;

(b) the department; or

(c) a local health officer.

(2) The application shall request that the person be ordered to:

(a) submit to an examination for tuberculosis and, if he is found to have tuberculosis, to complete an approved course of treatment; or

(b) enter or return to a hospital for treatment or follow an approved course of treatment outside of a hospital.

(3) The application for an order provided for in subsections (1) and (2) of this section shall allege that the person:

(a) is suspected of having tuberculosis or has been exposed to tuberculosis and has refused to be examined for tuberculosis as required by rules adopted by the department; or

(b) has tuberculosis and has refused to be treated or to complete an approved course of treatment.

(4) The application shall state the names of witnesses by which facts alleged may be proved. At least one witness must be a physician.

History: (1), (2)En. Sec. 28, Ch. 197, L. 1967; Sec. 69-4305, R.C.M. 1947; (3), (4)En. Sec. 29, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 69-4306, R.C.M. 1947; R.C.M. 1947, 69-4305, 69-4306; amd. Sec. 6, Ch. 37, L. 1979; amd. Sec. 5, Ch. 61, L. 1985.

50-17-106. Hearing on the application. The procedure for a hearing on the application is as follows:

(1) A summons stating the time and place of the hearing and a copy of the application are personally served on the person.

(2) The summons, with endorsement of the time of service, is filed with the district court prior to the hearing.

(3) Not fewer than 3 or more than 7 days after service of the summons, a hearing is held in the district court.

(4) The court examines witnesses in attendance or others it wishes to call.

History: En. Sec. 30, Ch. 197, L. 1967; R.C.M. 1947, 69-4307.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-17-107. Adjudication of application. Following the hearing, the court shall find that the allegations of the application are:

(1) true and order the person to enter or return to a hospital for treatment or to follow an approved course of treatment outside of a hospital;

(2) true and order the person to submit to an examination for tuberculosis within a specified time and to complete an approved course of treatment; or

(3) not true and order the person discharged.

History: En. Sec. 31, Ch. 197, L. 1967; R.C.M. 1947, 69-4308; amd. Sec. 6, Ch. 61, L. 1985.

50-17-108. Commitment to hospital on noncompliance with order. If a person fails to comply with an order to submit to an examination for tuberculosis within the time set or to complete an approved course of treatment, the court shall order him committed to a hospital.

History: En. Sec. 32, Ch. 197, L. 1967; R.C.M. 1947, 69-4309; amd. Sec. 7, Ch. 61, L. 1985.

Cross-References

Application of Montana Rules of Civil Procedure to commitment proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

50-17-109. Order of commitment — warrant for transportation. The court shall send certified copies of an order of commitment to the hospital and the department or local board of health and issue a warrant directed to the sheriff to transport the person to the designated hospital.

History: En. Sec. 33, Ch. 197, L. 1967; R.C.M. 1947, 69-4310.

50-17-110. Confinement in hospital — submission to treatment. (1) A person committed under 50-17-107 or 50-17-108 shall remain at the hospital until discharged under 50-17-112 or 50-17-113, but he is not required to submit to medical or surgical treatment without his written consent, the consent of his next of kin or guardian if the person is incompetent, or the consent of his parent or guardian if the person is a minor.

(2) The person in charge of the hospital may use reasonable means to insure that the person committed remains at the hospital.

History: En. Sec. 34, Ch. 197, L. 1967; R.C.M. 1947, 69-4311; amd. Sec. 8, Ch. 61, L. 1985.

Cross-References

Validity of consent for medical treatment, Title 41, ch. 1, part 4.

Guardianship and conservatorship, Title 72, ch. 5.

50-17-111. Transfer of person to another hospital. If it is in his best interest, a person may be transferred from the hospital to which he was committed to another hospital approved by the department. The person in charge of the hospital to which the person was committed shall notify the court that ordered commitment, and the department or local board that requested commitment, of the transfer.

History: En. Sec. 37, Ch. 197, L. 1967; R.C.M. 1947, 69-4314.

50-17-112. Procedure to obtain release from commitment. (1) One hundred and eighty days or more after the date of his commitment, a person committed under 50-17-107 or 50-17-108 may apply to the court that ordered his commitment for a release.

(2) Not fewer than 3 or more than 7 days after receipt of the request, the court shall hold a hearing.

(3) Following the hearing, the court shall:

(a) order his discharge if it finds he has completed an approved course of treatment or does not have tuberculosis; or

(b) dismiss the request if it finds he still has tuberculosis or he has refused to submit to an examination to determine whether he has tuberculosis or has not yet completed an approved course of treatment.

History: En. Sec. 35, Ch. 197, L. 1967; R.C.M. 1947, 69-4312; amd. Sec. 9, Ch. 61, L. 1985.

50-17-113. Voluntary release. (1) If the person in charge of the hospital and the department or local board that requested commitment concur that a person either does not have tuberculosis or has submitted to an approved course of treatment, the person shall be released from the hospital.

(2) The person in charge of the hospital shall file a notice of date of release with the court that ordered commitment.

History: En. Sec. 36, Ch. 197, L. 1967; R.C.M. 1947, 69-4313; amd. Sec. 10, Ch. 61, L. 1985.

50-17-114. Payment of costs, expenses, and fees. (1) Court costs, expenses, and all fees shall be paid by the treasurer of the county from which a person is committed.

(2) Expenses and fees shall be paid as follows:

(a) to sheriffs and their deputies the same fees allowed for similar services in district court;

(b) to physicians, not to exceed two, fees as set by the court;

(c) to witnesses the same fees and mileage provided for attendance in district court;

(d) to persons other than the sheriff or his deputies who transport a person to or from a hospital, witness fees and expenses as verified by the court.

(3) Expenses of transporting a person to a hospital for commitment shall be paid from the general fund of the county from which the person is committed.

History: (1), (2)En. Sec. 38, Ch. 197, L. 1967; Sec. 69-4315, R.C.M. 1947; (3)En. Sec. 39, Ch. 197, L. 1967; amd. Sec. 46, Ch. 349, L. 1974; Sec. 69-4316, R.C.M. 1947; R.C.M. 1947, 69-4315, 69-4316(part).

Cross-References

Mileage allowance, 2-18-503, 2-18-504, 3-15-201.

Mileage and expenses of Sheriff, 7-32-2143.

Witness fees, Title 26, ch. 2, part 5.

50-17-115. Emergency detainment — petition — detention. (1) If a physician, the department, or a local health officer reasonably believes that a person has communicable tuberculosis and that he is likely to attempt to leave the jurisdiction to avoid a hearing on commitment to a hospital, the physician, department, or local health officer shall notify the sheriff of the county in which the person is found, who shall cause the person to be detained in a hospital. At least by the next regular business day, the physician, department, or local health officer shall petition for an order from the district court of the county in which the person is found for continued detention of the person and to require examination or treatment for tuberculosis pursuant to 50-17-105. The sheriff must serve the summons required by 50-17-106 on the person the same day the petition is filed.

(2) Immediately after the petition is filed the court will decide whether further emergency detention is required and may order continued hospital detention of the person for no more than 7 days if it finds that the person is an unacceptable danger to the public health and safety in that he probably has communicable tuberculosis and unless detained will probably leave the jurisdiction to avoid a hearing pursuant to this part.

(3) The district court of the county in which the person is found has jurisdiction over the person for the purposes of this section. The district court

may, in the interests of justice, order that jurisdiction over further proceedings be transferred to the district court of the county of the person's residence.

History: En. Sec. 1, Ch. 460, L. 1989.

CHAPTER 18

SEXUALLY TRANSMITTED DISEASES

Part 1 — General Provisions

50-18-101. Sexually transmitted diseases defined.
50-18-102. Powers and duties of department.
50-18-103. Cooperation with federal agencies — federal funds.
50-18-104. Serological test for syphilis.
50-18-105. Rules of department binding.
50-18-106. Duty to report cases.
50-18-107. Powers and duties of health officers.
50-18-108. Examination and treatment of prisoners.
50-18-109. Permissible release of information concerning infected persons.
50-18-110. Unlawful dispensing of drugs for cure or alleviation of sexually transmitted disease.
50-18-111. Certificate of freedom from sexually transmitted disease not to be issued.
50-18-112. Infected person not to expose another to sexually transmitted disease.
50-18-113. Violation a misdemeanor.

Part 1

General Provisions

50-18-101. Sexually transmitted diseases defined. Acquired immunodeficiency syndrome (AIDS), syphilis, gonorrhea, chancroid, chlamydia genital infections, lymphogranuloma venereum, and granuloma inguinale are sexually transmitted diseases. Sexually transmitted diseases are contagious, infectious, communicable, and dangerous to public health.

History: En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part); amd. Sec. 1, Ch. 440, L. 1989.

50-18-102. Powers and duties of department. The department of health and environmental sciences shall undertake to prevent, control, and prescribe treatments for sexually transmitted diseases and may conduct education campaigns for this purpose.

History: En. Sec. 98, Ch. 197, L. 1967; amd. Sec. 57, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part); amd. Sec. 2, Ch. 440, L. 1989.

50-18-103. Cooperation with federal agencies — federal funds. (1) The department of health and environmental sciences shall cooperate with federal agencies and may expend federal funds made available to the state for the prevention, control, and treatment of sexually transmitted diseases.

(2) The department may accept federal funds available for the prevention, control, and treatment of sexually transmitted diseases, deposit funds in the state treasury, and disburse the funds.

History: En. Secs. 98, 99, Ch. 197, L. 1967; amd. Secs. 57, 58, Ch. 349, L. 1974; R.C.M. 1947, 69-4602(part), 69-4603; amd. Sec. 3, Ch. 440, L. 1989.

50-18-104. Serological test for syphilis. (1) The department of health and environmental sciences shall approve a standard serological test for syphilis. It shall also approve laboratories which may make such tests.

(2) On request the department shall make laboratory tests required by this chapter.

History: En. Sec. 107, Ch. 197, L. 1967; R.C.M. 1947, 69-4611; amd. Sec. 1, Ch. 41, L. 1985; amd. Sec. 4, Ch. 440, L. 1989.

50-18-105. Rules of department binding. Rules adopted by the department of health and environmental sciences for carrying out the provisions of this chapter are binding on all persons and have the effect of law.

History: En. Sec. 112, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4616.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-18-106. Duty to report cases. If a physician or other person knows or has reason to suspect that a person who has a sexually transmitted disease is conducting himself in a way which might expose another to infection, he shall immediately notify the local health officer of the name and address of the diseased person and the essential facts in the case.

History: En. Secs. 100, 103, Ch. 197, L. 1967; R.C.M. 1947, 69-4604, 69-4607; amd. Sec. 5, Ch. 440, L. 1989.

Cross-References

Physicians to report cases of communicable disease, 37-2-301.

50-18-107. Powers and duties of health officers. (1) If found necessary or desirable to protect public health, state and local health officers or their authorized deputies or agents shall:

(a) examine or have examined persons reasonably suspected of being infected with a sexually transmitted disease;

(b) require persons infected to report for treatment to a reputable physician and continue treatment, which may be at public expense, until cured;

(c) isolate or quarantine persons who refuse examination or treatment;

(d) investigate sources of infection of a sexually transmitted disease.

(2) No one but the state or local health officer may terminate the isolation or quarantine. Examinations may be made repeatedly as deemed advisable or desirable.

History: **En. Sec. 101, Ch. 197, L. 1967; R.C.M. 1947, 69-4605; amd. Sec. 6, Ch. 440, L. 1989.**

50-18-108. Examination and treatment of prisoners. Any person confined or imprisoned in any state, county, or municipal prison within the state may be examined for a sexually transmitted disease. If infected, the person must be treated by health authorities.

History: **En. Sec. 102, Ch. 197, L. 1967; R.C.M. 1947, 69-4606; amd. Sec. 7, Ch. 440, L. 1989.**

Cross-References

County jails, Title 7, ch. 32, part 22.

Municipal jails, Title 7, ch. 32, part 42.

State corrections, Title 53, ch. 30.

50-18-109. Permissible release of information concerning infected persons. (1) Information concerning persons infected or reasonably suspected to be infected with a sexually transmitted disease may be released only:

(a) to personnel of the department of health and environmental sciences;

(b) to a physician who has written consent of the person whose record is requested;

(c) to a local health officer; or

(d) by the department of health and environmental sciences or a local health officer or board under the circumstances allowed by Title 50, chapter 16, part 6.

(2) For the purposes of this section, the term "information" includes all knowledge or intelligence and all communications of all knowledge or intelligence, oral or written or in record form, and also includes but is not limited to information concerning the location or nature of the activities or work of all local, state, or federal employees or officers engaged in sexually transmitted disease eradication work, and such personnel are privileged.

(3) The purpose of this section is to protect and preserve the principle of confidentiality in sexually transmitted disease work by public personnel, local, state, and federal, such confidentiality being all important to the success of all sexually transmitted disease eradication work and endeavor, and to require that the principle of confidentiality in such work remain inviolate.

History: **En. Sec. 106, Ch. 197, L. 1967; amd. Sec. 1, Ch. 135, L. 1971; amd. Sec. 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4610; amd. Sec. 8, Ch. 440, L. 1989.**

Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

50-18-110. Unlawful dispensing of drugs for cure or alleviation of sexually transmitted disease. It is unlawful to prescribe, sell, or recommend any drugs, medicines, or other substances for the cure or alleviation of a sexually transmitted disease except upon prescription signed by a person legally authorized to do so by the pharmacy laws of this state.

History: **En. Sec. 104, Ch. 197, L. 1967; R.C.M. 1947, 69-4608; amd. Sec. 9, Ch. 440, L. 1989.**

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

50-18-111. Certificate of freedom from sexually transmitted disease not to be issued. No person shall issue a certificate of freedom from a sexually transmitted disease. However, a physician or health officer may issue a statement of freedom from diseases in an infectious state only if it is written in such form or given under safeguards that will prevent its use in solicitation for sexual intercourse. These statements shall not be used for solicitation for immoral purposes.

History: En. Sec. 105, Ch. 197, L. 1967; R.C.M. 1947, 69-4609; amd. Sec. 10, Ch. 440, L. 1989.

50-18-112. Infected person not to expose another to sexually transmitted disease. A person infected with a sexually transmitted disease may not knowingly expose another person to infection.

History: En. Sec. 97, Ch. 197, L. 1967; R.C.M. 1947, 69-4601(part); amd. Sec. 11, Ch. 440, L. 1989.

50-18-113. Violation a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department of health and environmental sciences concerning a sexually transmitted disease or who fails or refuses to obey any lawful order issued by a state or local health officer is guilty of a misdemeanor.

History: En. Sec. 113, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4617; amd. Sec. 12, Ch. 440, L. 1989.

Cross-References

Penalty when none specified, 46-18-212.

CHAPTER 19

PREGNANT WOMEN AND NEWBORN INFANTS

Part 1 — Serological Test for Women Seeking Prenatal Care

50-19-101. Definitions.
50-19-102. Duties of department.
50-19-103. Prenatal blood sample required for serological test.
50-19-104. Approved laboratory to perform syphilis and rubella immunity tests.
50-19-105. Report of positive test results.
50-19-106. Repealed.
50-19-107. Required and permissible exhibit of test results.
50-19-108. Unauthorized divulgence of information a misdemeanor.
50-19-109. Waiver of test by court when contrary to patient's religious creed.
50-19-110. Birth or fetal death certificate to state whether test made.

Part 2 — Metabolic Tests of Infants—Genetics Program

50-19-201. Definitions.
50-19-202. Administration.
50-19-203. Metabolic tests.
50-19-204. Department and Montana developmental center to furnish assistance when requested.

50-19-205 through 50-19-210 reserved.
50-19-211. Voluntary genetics program established.

Part 3 — Montana Initiative for the Abatement of Mortality in Infants

50-19-301. Short title.
50-19-302. Purposes.
50-19-303. Definitions.
50-19-304 through 50-19-310 reserved.
50-19-311. MIAMI project.
50-19-312. Advisory council — powers and duties.
50-19-313 through 50-19-320 reserved.
50-19-321. Contracts for services.
50-19-322. Federal and other aid.
50-19-323. Coordination of programs.

Part 1

Serological Test for Women Seeking Prenatal Care

50-19-101. Definitions. (1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department.

History: En. Sec. 1, Ch. 228, L. 1973; amd. Sec. 25, Ch. 187, L. 1977; R.C.M. 1947, 69-6701.

50-19-102. Duties of department. (1) The department shall provide all necessary printing and pay all necessary expenses relative to administration of this part.

(2) Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the physician and the state shall be adopted by the department.

(3) The department may use information derived from reports of positive tests for sexually transmitted diseases for follow-up procedures required by law or considered necessary by the department for the protection of public health.

History: En. Secs. 3, 7, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(1), (3), 69-6707; amd. Sec. 16, Ch. 440, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duty to report cases of sexually transmitted diseases, 50-18-106.

50-19-103. Prenatal blood sample required for serological test. (1) Every female, regardless of age or marital status, seeking prenatal care from a physician is required to submit blood specimen for the purpose of a standard serological test. In submitting the specimen to the laboratory, the physician shall designate it as a prenatal test.

(2) A physician or other person authorized by law to practice obstetrics who attends a pregnant woman shall at the first professional visit take the blood sample and submit it to a laboratory.

(3) A person permitted to attend a pregnant woman, but not permitted to take blood samples, shall have the sample taken by a person permitted to take blood samples and submit it to a laboratory.

(4) Any physician or other person required to take the blood sample who violates this part is guilty of a misdemeanor. However, a person who requests a sample of blood in accordance with this provision and whose request is refused is not guilty of a violation of this section.

History: En. Sec. 2, Ch. 228, L. 1973; R.C.M. 1947, 69-6702.

Cross-References

Penalty when none specified, 46-18-212.

50-19-104. Approved laboratory to perform syphilis and rubella immunity tests. (1) The tests for syphilis and rubella immunity must be done by the laboratory of the department, a laboratory approved by the department, any other state laboratory, or a United States public health service or armed forces laboratory.

(2) The department may establish a reasonable fee for the tests done by the department laboratory.

History: En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(part); amd. Sec. 1, Ch. 72, L. 1985.

50-19-105. Report of positive test results. All positive laboratory tests for any sexually transmitted diseases must be reported to the department by the laboratory preparing the test. The department shall prescribe the form and way of reporting.

History: En. Sec. 3, Ch. 228, L. 1973; R.C.M. 1947, 69-6703(2); amd. Sec. 13, Ch. 440, L. 1989.

50-19-106. Repealed. Sec. 5, Ch. 154, L. 1983.

History: En. Sec. 4, Ch. 228, L. 1973; amd. Sec. 26, Ch. 187, L. 1977; R.C.M. 1947, 69-6704.

50-19-107. Required and permissible exhibit of test results. The report of the results of the test so certified by the laboratory shall be exhibited by the physician to the patient. Upon request of the patient, the report of the results of the test may be exhibited to the spouse of the patient, or if the patient is a minor, report of the results of the test may be exhibited to the minor's parents or to the minor's legal guardian.

History: En. Sec. 5, Ch. 228, L. 1973; R.C.M. 1947, 69-6705.

50-19-108. Unauthorized divulgence of information a misdemeanor. Certificates, laboratory statements or reports, or any other matters in this part referred to and the information therein contained shall be confidential and may not be divulged to or open to inspection by any person other than the patient or those designated by the patient to receive the information or other than state and local health officers or their duly authorized representatives. A person who divulges this information or opens to inspection the certificates, statements, or reports without authority to any person not by law entitled to them is guilty of a misdemeanor and may be fined not more than $100.

History: En. Sec. 6, Ch. 228, L. 1973; R.C.M. 1947, 69-6706.

Cross-References

Right of privacy guaranteed, Art. II, sec. 10, Mont. Const.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

50-19-109. Waiver of test by court when contrary to patient's religious creed. The district court within the county wherein any person affected by this part resides may waive the requirements of this part as to the person if the judge is satisfied, by affidavit or other proof, that the tests required by the part are contrary to the tenets or practices of the religious creed of which the applicant is an adherent and that the public health and welfare will not be injuriously affected thereby.

History: En. Sec. 8, Ch. 228, L. 1973; R.C.M. 1947, 69-6708.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

50-19-110. Birth or fetal death certificate to state whether test made. A birth or fetal death certificate shall state whether a standard serological test was made on the specimen of blood, but the birth or fetal death certificate may not show the result of the test. The certificate shall state the approximate date when the specimen was taken, and if no test was made, the reason shall be stated.

History: En. Sec. 9, Ch. 228, L. 1973; R.C.M. 1947, 69-6709.

Part 2

Metabolic Tests of Infants — Genetics Program

50-19-201. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences.

(2) "Newborn" means any infant under 28 days of life.

(3) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

History: En. Sec. 1, Ch. 227, L. 1973; R.C.M. 1947, 69-6710.

50-19-202. Administration. This part shall be administered by the department, and the department may adopt rules for the administration of this part.

History: **En. Sec. 3, Ch. 227, L. 1973; R.C.M. 1947, 69-6712.**

Cross-References

Adoption of publication of rules, Title 2, ch. 4, part 3.

50-19-203. Metabolic tests. (1) A person in charge of a facility wherein a child is born or wherein a newborn infant is cared for or a person responsible for the registration of birth of an infant shall ensure each infant is administered tests designed to detect inborn metabolic errors as shall be required to be administered under rules adopted by the department.

(2) The tests shall be done by an approved laboratory. An approved laboratory shall be the laboratory of the department or a laboratory approved by the department.

History: **En. Sec. 2, Ch. 227, L. 1973; R.C.M. 1947, 69-6711.**

50-19-204. Department and Montana developmental center to furnish assistance when requested. (1) The department and the staff of the Montana developmental center shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this part.

(2) The department may determine its procedure for advising the attending physician, the parents, or legal guardian of the newborn infant of any medical results of the test and the availability of assistance, services, or counseling of the department and the staff of the Montana developmental center.

(3) The department may determine procedures for coordination with the Montana developmental center in providing the services and assistance required in this part.

History: **En. Sec. 4, Ch. 227, L. 1973; R.C.M. 1947, 69-6713; amd. Sec. 1, Ch. 151, L. 1985.**

Cross-References

Primary function of Montana Developmental Center, 53-20-501.

50-19-205 through 50-19-210 reserved.

50-19-211. Voluntary genetics program established. A voluntary statewide genetics program is established in the department to offer testing, counseling, and education to parents and prospective parents. The program includes, but is not limited to, the following services:

(1) followup programs for newborn testing, with emphasis on the counseling and education of women at risk for maternal phenylketonuria;

(2) comprehensive genetic services to all areas of the state and all segments of the population;

(3) development of counseling and testing programs for the diagnosis and management of genetic conditions and metabolic disorders; and

(4) development and expansion of educational programs for physicians, allied health professionals, and the public with respect to:

(a) the nature of genetic processes;

(b) the inheritance patterns of genetic conditions; and

(c) the means, methods, and facilities available to diagnose, counsel, and treat genetic conditions and metabolic disorders.

History: En. Sec. 1, Ch. 706, L. 1985.

Cross-References

Genetics program fee, 33-2-712.

Group disability policy exemption, 33-2-713.

Part 3

Montana Initiative for the Abatement of Mortality in Infants

50-19-301. Short title. This part may be cited as "The Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act".

History: En. Sec. 1, Ch. 649, L. 1989.

Compiler's Comments

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-302. Purposes. The purposes of this part are to:

(1) assure that mothers and children, in particular those with low income or with limited availability of health services, receive access to quality maternal and child health services;

(2) reduce infant mortality and the number of low birthweight babies; and

(3) prevent the incidence of children born with chronic illnesses, birth defects, or severe disabilities as a result of inadequate prenatal care.

History: En. Sec. 2, Ch. 649, L. 1989.

Compiler's Comments

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-303. Definitions. For purposes of this part, the following definitions apply:

(1) "Council" means the MIAMI project advisory council established in 2-15-2109.

(2) "Department" means the department of health and environmental sciences provided for in 2-15-2101.

(3) "Low income" means, with respect to an individual or family, income that does not exceed the official federal poverty threshold as defined by the federal office of management and budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981.

(4) "Project" means the MIAMI project established in 50-19-311.

(5) "Service provider" means a person, agency, or organization that has a contract to provide services under the MIAMI project.

History: En. Sec. 3, Ch. 649, L. 1989.

Compiler's Comments

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-304 through 50-19-310 reserved.

50-19-311. MIAMI project. (1) There is a MIAMI project established in the department.

(2) Under the project, the department shall provide the following services:

(a) infant mortality review;

(b) morbidity review of births involving low birthweight babies;

(c) low birthweight prevention;

(d) assistance to low-income women and infants in gaining access to prenatal care, delivery, and postpartum care;

(e) referral of low-income women and children to other programs to protect the health of women and children, including:

(i) supplemental food programs for women, infants, and children;

(ii) family planning services; and

(iii) other maternal and child health programs;

(f) public education and community outreach to inform the public on:

(i) the importance of receiving early prenatal care;

(ii) the need for good health habits during pregnancy; and

(iii) the availability of special services for pregnant women and for children.

History: En. Sec. 4, Ch. 649, L. 1989; amd. Sec. 2, Ch. 634, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2)(b) providing for morbidity review of low birthweight babies. Amendment effective June 30, 1991.

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-312. Advisory council — powers and duties. The council shall:

(1) advise the department on matters relating to administration of the MIAMI project;

(2) review and monitor activities conducted under the project;

(3) gather information relating to infant mortality and morbidity and the incidence of low birthweight babies;

(4) identify problems in the quality and availability of maternal and child health services; and

(5) make recommendations to improve maternal and child health services consistent with the purposes of this part.

History: En. Sec. 6, Ch. 649, L. 1989; amd. Sec. 3, Ch. 634, L. 1991.

Compiler's Comments

1991 Amendment: In (3), after "mortality and", inserted "morbidity and the incidence of". Amendment effective June 30, 1991.

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-313 through 50-19-320 reserved.

50-19-321. Contracts for services. (1) The department shall contract with service providers to provide services under the MIAMI project.

(2) In selecting service providers, the department shall take into consideration the past performance of the person, agency, or organization in providing similar services, the demonstrated effectiveness of the service provider in

delivering comparable or related services, the fiscal accountability of the service provider, and such other factors as the department determines to be appropriate.

History: En. Sec. 7, Ch. 649, L. 1989.

Compiler's Comments

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-322. Federal and other aid. (1) The department may apply for and receive federal aid and other funding available for the MIAMI project.

(2) Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of this part.

History: En. Sec. 8, Ch. 649, L. 1989.

Compiler's Comments

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

50-19-323. Coordination of programs. The department shall coordinate services under the MIAMI project with other services and programs in the state including:

(1) the early and periodic screening, diagnosis, and treatment services program under Title XIX of the federal Social Security Act;

(2) the Montana medicaid program established in 53-6-101; and

(3) programs administered with funds under the federal Maternal and Child Health Services Block Grant Act, Public Law 97-35, as may be amended.

History: En. Sec. 9, Ch. 649, L. 1989.

Compiler's Comments

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated this section on June 30, 1991.

CHAPTER 20

ABORTION

Part 1 — Montana Abortion Control Act

50-20-101. Short title.
50-20-102. Statement of purpose.
50-20-103. Legislative intent.
50-20-104. Definitions.
50-20-105. Duties of department.
50-20-106. Consent to abortion.
50-20-107. Written notice to spouse or parent required.
50-20-108. Protection of premature infants born alive.
50-20-109. Control of practice of abortion.
50-20-110. Reporting of practice of abortion.
50-20-111. Right to refuse participation in abortion.
50-20-112. Penalties.

Part 1

Montana Abortion Control Act

Part Cross-References
Rights of unborn, 41-1-103.

50-20-101. Short title. This chapter shall be known and may be cited as the "Montana Abortion Control Act".

History: En. 94-5-613 by Sec. 1, Ch. 284, L. 1974; R.C.M. 1947, 94-5-613.

50-20-102. Statement of purpose. The legislature reaffirms the tradition of the state of Montana to protect every human life, whether unborn or aged, healthy or sick. In keeping with this tradition and in the spirit of our constitution, we reaffirm the intent to extend the protection of the laws of Montana in favor of all human life.

History: En. 94-5-614 by Sec. 2, Ch. 284, L. 1974; R.C.M. 1947, 94-5-614.

50-20-103. Legislative intent. It is the intent of the legislature to restrict abortion to the extent permissible under decisions of appropriate courts or paramount legislation.

History: En. 94-5-623 by Sec. 11, Ch. 284, L. 1974; R.C.M. 1947, 94-5-623.

50-20-104. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(3) "Informed consent" means voluntary consent to an abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of the physician in his professional capacity:

(a) the stage of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus;

(b) the physical and psychological effects of abortion; and

(c) available alternatives to abortion, including childbirth and adoption.

(4) "Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid.

History: En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; R.C.M. 1947, 94-5-615(part).

50-20-105. Duties of department. (1) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(2) The department shall make regulations for a comprehensive system of reporting of maternal deaths and complications within the state resulting directly or indirectly from abortion, subject to the provisions of 50-20-110(5).

(3) The department shall report to the attorney general any apparent violation of this chapter.

History: (1)En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; Sec. 94-5-617, R.C.M. 1947; (2)En. 94-5-621 by Sec. 9, Ch. 284, L. 1974; Sec. 94-5-621, R.C.M. 1947; (3)En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; Sec. 94-5-619, R.C.M. 1947; R.C.M. 1947, 94-5-617(4), 94-5-619(6), 94-5-621.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Duties of Attorney General, 2-15-501.

50-20-106. Consent to abortion. (1) No abortion may be performed upon any woman in the absence of informed consent.

(2) Informed consent may be evidenced by a written statement in a form prescribed by the department and signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he has made the full disclosure provided in 50-20-104(3) and in which the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(3) The above informed consent or consent is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(4) No executive officer, administrative agency, or public employee of the state or of any local governmental body has power to issue any order requiring an abortion or shall coerce any woman to have an abortion, nor shall any person coerce any woman to have an abortion.

(5) Violation of subsections (1) and (4) of this section is a misdemeanor.

History: (1), (3) thru (5)En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; Sec. 94-5-616, R.C.M. 1947; (2)En. 94-5-615 by Sec. 3, Ch. 284, L. 1974; amd. Sec. 38, Ch. 187, L. 1977; Sec. 94-5-615, R.C.M. 1947; R.C.M. 1947, 94-5-615(part), 94-5-616(part).

Cross-References

Penalty for misdemeanor, 50-20-112.

50-20-107. Written notice to spouse or parent required. (1) No abortion may be performed upon any woman in the absence of:

(a) the written notice to her husband, unless her husband is voluntarily separated from her;

(b) the written notice to a parent, if living, or the custodian or legal guardian of such woman if she is under 18 years of age and unmarried.

(2) Violation of this section is a misdemeanor.

History: En. 94-5-616 by Sec. 4, Ch. 284, L. 1974; R.C.M. 1947, 94-5-616(part).

Cross-References

Penalty for misdemeanor, 50-20-112.

50-20-108. Protection of premature infants born alive. (1) A person commits an offense, as defined in 45-5-102 through 45-5-104, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse or either of them have agreed in writing in advance of the abortion or within 72 hours thereafter to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) No person may use any premature infant born alive for any type of scientific research or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant born alive.

(4) Violation of subsection (3) of this section is a felony.

History: En. 94-5-617 by Sec. 5, Ch. 284, L. 1974; amd. Sec. 13, Ch. 338, L. 1977; R.C.M. 1947, 94-5-617(1) thru (3), (5); amd. Sec. 9, Ch. 610, L. 1987.

Cross-References

Child abuse, neglect, and dependency, Title 41, ch. 3.

Penalty for felony, 50-20-112.

50-20-109. Control of practice of abortion. (1) No abortion may be performed within the state of Montana:

(a) except by a licensed physician;

(b) after the first 3 months of pregnancy, except in a hospital licensed by the department;

(c) after viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother.

(2) An abortion under subsection (1)(c) may only be performed if:

(a) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him setting forth in detail the facts upon which he relies in making such judgment; and

(b) two other licensed physicians have first examined the patient and concurred in writing with such judgment. The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(3) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 45-2-101(37). The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(4) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(5) Violation of subsections (1), (2), and (3) of this section is a felony. Violation of subsection (4) of this section is a misdemeanor.

History: En. 94-5-618 by Sec. 6, Ch. 284, L. 1974; amd. Sec. 20, Ch. 359, L. 1977; R.C.M. 1947, 94-5-618; amd. Sec. 7, Ch. 485, L. 1981.

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

Licensing of physicians, Title 37, ch. 3, part 3.

Penalty for felony, 50-20-112.

Penalty for misdemeanor, 50-20-112.

50-20-110. Reporting of practice of abortion. (1) Every facility in which an abortion is performed within the state shall keep on file upon a form prescribed by the department a statement dated and certified by the physician who performed the abortion setting forth such information with respect to the abortion as the department by regulation shall require, including but not limited to information on prior pregnancies, the medical procedure employed to administer the abortion, the gestational age of the fetus, the vital signs of the fetus after abortion, if any, and if after viability, the medical procedures employed to protect and preserve the life and health of the fetus.

(2) The physician performing an abortion shall cause such pathology studies to be made in connection therewith as the department shall require by regulation, and the facility shall keep the reports thereof on file.

(3) In connection with an abortion, the facility shall keep on file the original of each of the documents required by this chapter relating to informed consent, consent to abortion, certification of necessity of abortion to preserve the life or health of the mother, and certification of necessity of abortion to preserve the life of the mother.

(4) Such facility shall, within 30 days after the abortion, file with the department a report upon a form prescribed by the department and certified by the custodian of the records or physician in charge of such facility setting forth all of the information required in subsections (1), (2), and (3) of this section, except such information as would identify any individual involved with the abortion. The report shall exclude copies of any documents required to be filed by subsection (3) of this section, but shall certify that such documents were duly executed and are on file.

(5) All reports and documents required by this chapter shall be treated with the confidentiality afforded to medical records, subject to such disclosure as is permitted by law. Statistical data not identifying any individual involved in an abortion shall be made public by the department annually, and the report required by subsection (4) of this section to be filed with the department shall be available for public inspection except insofar as it identifies any individual involved in an abortion. Names and identities of persons submitting to abortion shall remain confidential among medical and medical support personnel directly involved in the abortion and among persons working in the facility where the abortion was performed whose duties include billing the patient or submitting claims to an insurance company, keeping facility records, or processing abortion data required by state law.

(6) Violation of this section is a misdemeanor and is punishable as provided in 46-18-212.

History: En. 94-5-619 by Sec. 7, Ch. 284, L. 1974; R.C.M. 1947, 94-5-619(1) thru (5); amd. Sec. 10, Ch. 228, L. 1981.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Confidentiality of health care information, Title 50, ch. 16, part 5.

50-20-111. Right to refuse participation in abortion. (1) No private hospital or health care facility shall be required contrary to the religious or moral tenets or the stated religious beliefs or moral convictions of its staff or governing board to admit any person for the purpose of abortion or to permit the use of its facilities for such purpose. Such refusal shall not give rise to liability of such hospital or health care facility or any personnel or agent or governing board thereof to any person for damages allegedly arising from such refusal or be the basis for any discriminatory, disciplinary, or other recriminatory action against such hospital or health care facility or any personnel, agent, or governing board thereof.

(2) All persons shall have the right to refuse to advise concerning, perform, assist, or participate in abortion because of religious beliefs or moral convictions. If requested by any hospital or health care facility or person desiring an abortion, such refusal shall be in writing signed by the person refusing, but may refer generally to the grounds of "religious beliefs and moral convictions". The refusal of any person to advise concerning, perform, assist, or participate in abortion shall not be a consideration in respect of staff privileges of any hospital or health care facility or a basis for any discriminatory, disciplinary, or other recriminatory action against such person, nor shall such person be liable to any person for damages allegedly arising from refusal.

(3) It shall be unlawful to interfere or attempt to interfere with the right of refusal authorized by this section. The person injured thereby shall be entitled to injunctive relief, when appropriate, and shall further be entitled to monetary damages for injuries suffered.

(4) Such refusal by any hospital or health care facility or person shall not be grounds for loss of any privileges or immunities to which the granting of consent may otherwise be a condition precedent or for the loss of any public benefits.

(5) As used in this section, the term "person" includes one or more individuals, partnerships, associations, and corporations.

History: En. 94-5-620 by Sec. 8, Ch. 284, L. 1974; R.C.M. 1947, 94-5-620.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

50-20-112. Penalties. (1) A person convicted of deliberate, mitigated, or negligent homicide under this chapter is subject to the penalties prescribed by 45-5-102 through 45-5-104.

(2) A person convicted of a felony other than deliberate, mitigated, or negligent homicide under this chapter is subject to a fine not to exceed $1,000, imprisonment in the state prison for a term not to exceed 5 years, or both.

(3) A person convicted of a misdemeanor under this chapter is subject to a fine not to exceed $500, imprisonment in the county jail for a term not to exceed 6 months, or both.

History: En. 94-5-622 by Sec. 10, Ch. 284, L. 1974; amd. Sec. 14, Ch. 338, L. 1977; R.C.M. 1947, 94-5-622; amd. Sec. 10, Ch. 610, L. 1987.

CHAPTER 21

CADAVERS AND AUTOPSIES

Part 1 — General Provisions

50-21-101. Procurement of cadavers.
50-21-102. Procedure to procure cadavers.
50-21-103. Limitations on right to perform autopsy or dissection.
50-21-104. Autopsies.
50-21-105. Morticians not affected.
50-21-106. Penalty for unauthorized post-mortem examinations.

Part 1

General Provisions

Part Cross-References

Disposition and removal of remains, Title 35, ch. 21, part 3.

Provisions relating to corpses, Title 44, ch. 3, part 4.

Uniform Anatomical Gift Act, Title 72, ch. 17.

50-21-101. Procurement of cadavers. Any medical school in the United States may procure unclaimed human bodies for use in teaching and demonstrations of anatomy.

History: En. Sec. 153, Ch. 197, L. 1967; R.C.M. 1947, 69-5101.

50-21-102. Procedure to procure cadavers. The procedure to procure a human body for use in teaching and demonstrations of anatomy is as follows:

(1) The medical school shall apply to the person or organization having custody of the unclaimed body asking that the body be delivered to the school for teaching and demonstration of anatomy.

(2) The medical school shall file a notarized statement with the department of health and environmental sciences showing that proper equipment is available for proper handling, security, and preservation of human bodies.

(3) The body shall be kept at the unit, institution, or hospital for at least 3 weeks after the date of death before it can be used.

(4) The medical school shall pay the costs of special preparation and transportation of the body.

(5) A burial permit shall accompany each body, and the medical school shall properly register the body and arrange for burial by a licensed mortician at the expense of the medical school.

(6) If there was no request by the deceased person that his body be buried immediately, the person or organization having custody may deliver an unclaimed body to the medical school applying.

(7) The medical school shall file a statement with the department stating that the body will be used only for teaching and demonstration of anatomy.

History: En. Sec. 154, Ch. 197, L. 1967; amd. Sec. 105, Ch. 349, L. 1974; R.C.M. 1947, 69-5102.

Cross-References

Provisions relating to corpses, Title 44, ch. 3, part 4.

Burial permit, 50-15-405.

50-21-103. Limitations on right to perform autopsy or dissection. The right to perform an autopsy, dissect a human body, or make any postmortem examination involving dissection of any part of a body is limited to cases where:

(1) specifically authorized by law;

(2) a coroner is authorized to hold an inquest and then only to the extent that the coroner may authorize dissection or autopsy;

(3) authorized by a written statement of the deceased, whether the statement is of a testamentary character or otherwise;

(4) authorized by the husband, wife, or next of kin responsible by law for burial to determine the cause of death and then only to the extent so authorized;

(5) the decedent died in a hospital operated by the United States department of veterans affairs, Montana school for the deaf and blind, or an institution in the department of corrections and human services leaving no surviving husband, wife, or next of kin responsible by law for burial and the manager or superintendent of the hospital or institution where death occurred obtains authority on order of the district court to determine the cause of death and then only to the extent authorized by court order;

(6) the decedent died in the state, was a resident, but left no surviving husband, wife, or next of kin charged by law with the duty of burial and the attending physician obtains authority on order of the district court for the purpose of ascertaining the cause of death and then only to the extent authorized by court order after it has been shown that the physician made diligent search for the next of kin responsible by law for burial.

History: En. Sec. 155, Ch. 197, L. 1967; R.C.M. 1947, 69-5103; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Office of County Coroner, Title 7, ch. 4, part 29.

50-21-104. Autopsies. All autopsies of a human body shall be performed by a physician legally authorized to practice medicine in this state. Upon completion, the physician shall send a written report of his findings, including the cause of death if determined, to the physician attending the person at the time of death if other than the physician performing the autopsy; upon the request of any such hospital or skilled nursing facility, to the hospital or skilled nursing facility where the person died or where he was confined during his last illness to be retained as part of the permanent record of the hospital or skilled nursing facility; to the next of kin of the decedent or the representative of the decedent's estate upon request, and to such other person lawfully requesting the report.

History: En. Sec. 156, Ch. 197, L. 1967; amd. Sec. 1, Ch. 158, L. 1973; R.C.M. 1947, 69-5104.

Cross-References

Licensing of physicians, Title 37, ch. 3, part 3.

Exemption from liability for autopsy, 44-3-401.

50-21-105. Morticians not affected. This chapter shall not restrict the right of a licensed mortician to dissect a human body for proper preparation of the body for burial, cremation, or other disposition provided by law.

History: En. Sec. 157, Ch. 197, L. 1967; R.C.M. 1947, 69-5105.

Cross-References

Licensing of morticians, Title 37, ch. 19, part 3.

50-21-106. Penalty for unauthorized post-mortem examinations. Unless authorized by law, any person who performs an autopsy, dissection, or other post-mortem examination or causes it to be made is guilty of a misdemeanor. Upon conviction he shall be punished by a fine not exceeding $500.

History: En. Sec. 158, Ch. 197, L. 1967; R.C.M. 1947, 69-5106.

Cross-References

Penalty for disturbing corpse, 44-3-404.

CHAPTER 22

DETERMINATION OF DEATH

Part 1 — General Provisions

50-22-101. Determination of death.

Part 1

General Provisions

50-22-101. Determination of death. An individual who has sustained either irreversible cessation of circulatory and respiratory functions or irreversible cessation of all functions of the entire brain, including the brainstem, is dead. A determination of death must be made in accordance with accepted medical standards.

History: En. 69-7201 by Sec. 1, Ch. 228, L. 1977; R.C.M. 1947, 69-7201; amd. Sec. 1, Ch. 86, L. 1983.

Cross-References

Requirement that devisee survive testator, 72-2-511.

Uniform Anatomical Gift Act, Title 72, ch. 17.

CHAPTER 23

RABIES CONTROL

Part 1 — Restrictions on Possession of Wild Animals

50-23-101. Definitions.
50-23-102. Prohibition of possession of wild animals — exceptions.
50-23-103. Quarantine — destruction — testing.
50-23-104. Payment of expenses.
50-23-105. Authority to adopt rules.
50-23-106. Injunction — recovery of costs.

Part 1

Restrictions on Possession of Wild Animals

Part Cross-References

Ownership of wild animals, 70-2-111.

50-23-101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department of health and environmental sciences" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Department of livestock" means the department of livestock provided for in Title 2, chapter 15, part 31.

(3) "Person" means an individual, group of individuals, partnership, corporation, firm, or association.

(4) "Wild animal" means a skunk, fox, raccoon, or bat. Other species of normally nondomesticated animals known to be capable of transmitting rabies may be added to this list through the adoption of rules by the department of health and environmental sciences with the approval of the department of livestock.

History: **En. Sec. 1, Ch. 448, L. 1981.**

50-23-102. Prohibition of possession of wild animals — exceptions. No person may possess a wild animal unless he possessed it for at least 6 months prior to January 1, 1982, or it is used in a fur-bearing enterprise, contained in a zoological exhibition in such a manner that it may not come in physical contact with members of the public, or acquired by an educational institution for scientific research.

History: **En. Sec. 2, Ch. 448, L. 1981.**

Cross-References

Property rights in wild and fur-bearing animals, 70-2-111.

50-23-103. Quarantine — destruction — testing. (1) Whenever a person unlawfully possesses a wild animal, the department of health and environmental sciences or the department of livestock may impound the animal and take any other action considered reasonable to protect public health.

(2) If a wild animal, whether unlawfully or lawfully in the possession of a person, has bitten or otherwise exposed a person to the potentiality of contracting rabies, the animal may be impounded by the department of health and environmental sciences, the department of livestock, or a local health officer and either quarantined or destroyed and the animal's brain may be tested for rabies.

(3) Any lawfully possessed wild animal that is quarantined pursuant to subsection (2) and found not to be rabid shall be returned to its owner.

History: **En. Sec. 3, Ch. 448, L. 1981.**

50-23-104. Payment of expenses. Expenses incurred by the state under 50-23-103 must be paid by the person from whom possession of the wild animal was taken.

History: **En. Sec. 4, Ch. 448, L. 1981.**

50-23-105. Authority to adopt rules. The department of health and environmental sciences, with the approval of the department of livestock, may adopt rules necessary for the implementation and administration of this part.

History: **En. Sec. 5, Ch. 448, L. 1981.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-23-106. Injunction — recovery of costs. (1) In addition to any other remedies provided by law, the department of health and environmental sciences or, upon the request of the department of health and environmental sciences, an appropriate county attorney may file an action to enjoin a violation of this part or rule adopted pursuant to it.

(2) The department of health and environmental sciences or the county attorney, if either prevails in any action brought pursuant to (1) above, is entitled to recover from the other party the costs, expenses, and reasonable attorney's fees incurred.

History: En. Sec. 6, Ch. 448, L. 1981.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Costs, Title 25, ch. 10.

Injunctions, Title 27, ch. 19.

CHAPTERS 24 THROUGH 29

RESERVED

CHAPTER 30

CONSUMER PRODUCT SAFETY ACT

Part 1 — General Provisions

50-30-101. Short title.
50-30-102. Definitions.
50-30-103. Department authorized to adopt rules.
50-30-104. Department to develop accident prevention and health oriented education programs.
50-30-105. Publication of information by department.
50-30-106. Department to conduct investigations.
50-30-107. Powers and duties of department's agents.
50-30-108. Carriers to permit inspection.

Part 2 — Hazardous Substances

50-30-201. Hazardous substance defined.
50-30-202. Misbranded hazardous substance defined.
50-30-203. Banned hazardous substance defined.
50-30-204. Toxic defined.
50-30-205. Highly toxic defined.
50-30-206. Corrosive defined.
50-30-207. Irritant defined.
50-30-208. Strong sensitizer defined.
50-30-209. Extremely flammable, flammable, and combustible defined.
50-30-210. Radioactive substance defined.
50-30-211. Label defined.

50-30-212. Electrical hazards.
50-30-213. Mechanical hazards.
50-30-214. Thermal hazards.
50-30-215. Declaration of hazardous substance.
50-30-216. Additional labeling requirements.
50-30-217. Exemption from labeling requirements.
50-30-218. When labeling requirement complied with.
50-30-219. Ban of hazardous substance authorized.
50-30-220. Toys and other children's articles.

Part 3 — Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts.
50-30-302. Notice and hearing required prior to prosecution.
50-30-303. Department and county attorney to prosecute violations.
50-30-304. Penalty.
50-30-305. Exceptions to penalty.
50-30-306. Injunction authorized.
50-30-307. Detainer of misbranded or banned hazardous substance.

Chapter Cross-References

Warranty provisions under the Uniform Commercial Code, 30-2-312 through 30-2-318.

Weights, measures, standards, and labeling, Title 30, ch. 12.

Unfair trade practices and consumer protection, Title 30, ch. 14.

State correctional policy, 46-18-101.

Hazardous waste management, Title 75, ch. 10, part 4.

Regulation of standards and sale of grain, seed, commercial feeds, and fertilizer; regulation of itinerant produce merchants and produce wholesalers; and inspection, grading, and packing of apples, Title 80, ch. 3, 4, 5, 9, and 10.

Montana quality labels; regulation of poultry, eggs, and egg dealers; and regulation of manufactured dairy products, Title 81, ch. 8, 20, and 22.

Part 1

General Provisions

50-30-101. Short title. This chapter shall be cited as the "Montana Consumer Product Safety Act of 1975".

History: En. 69-7101 by Sec. 2, Ch. 394, L. 1975; R.C.M. 1947, 69-7101.

50-30-102. Definitions. In this chapter, the following definitions apply:

(1) "Commerce" means all commerce within this state and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(2) "Court" means, in 50-30-220, the district court for the first judicial district and, in 50-30-306 and 50-30-307, the district court in the district where the violation occurs.

(3) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(4) "Person" includes an individual, partnership, corporation, or association or its legal representative or agent.

History: **En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(1) thru (3), (18).**

50-30-103. Department authorized to adopt rules. (1) The authority to adopt rules for the efficient enforcement of this chapter is vested in the department.

(2) The department has the authority to adopt by reference without public hearing rules adopted under the Federal Hazardous Substances Act as amended.

History: **En. 69-7109 by Sec. 9, Ch. 394, L. 1975; R.C.M. 1947, 69-7109.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-104. Department to develop accident prevention and health oriented education programs. The department, in cooperation with other state and federal agencies, shall develop and conduct appropriate accident prevention and health oriented educational programs. The educational programs shall inform the public of the hazards, proper handling and use, disposal, storage, and transportation of hazardous substances and the proper medical and first-aid procedures for accidents resulting from hazardous substances.

History: **En. 69-7112 by Sec. 12, Ch. 394, L. 1975; R.C.M. 1947, 69-7112.**

Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Department to conduct research and investigations on hazardous wastes and publish studies, 75-10-404.

50-30-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing any judgments, research findings, decrees, or court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated information regarding hazardous substances in situations involving imminent danger to health.

(3) Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: **En. 69-7113 by Sec. 13, Ch. 394, L. 1975; R.C.M. 1947, 69-7113.**

Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Department to conduct research and investigations on hazardous wastes and publish studies, 75-10-404.

50-30-106. Department to conduct investigations. (1) The department shall conduct investigations of reported accidental injuries, illnesses, and deaths resulting from the use or misuse of all hazardous substances, as defined by 50-30-201(1)(a), intended or suitable for use by the general public.

(2) Investigations shall evaluate the causative hazardous substance and circumstances of the accident for enforcement of this chapter.

(3) If the offending hazardous substance is a pesticide regulated by another agency under the federal Environmental Pesticide Control Act or the Montana Pesticides Act, the investigation shall yield recommendations to the appropriate regulating agency for appropriate action.

History: En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(3).

Cross-References

Prohibition against revealing trade secret information gathered in departmental investigations, 50-30-301.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Department to conduct investigations on hazardous wastes, 75-10-404.

Montana Pesticides Act, Title 80, ch. 8.

50-30-107. Powers and duties of department's agents. (1) For enforcement of this chapter, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized to:

(a) enter at reasonable times a factory, warehouse, or establishment in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction;

(b) enter a vehicle being used to transport or hold hazardous substances in commerce;

(c) inspect at reasonable times, within reasonable limits, and in a reasonable manner a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling therein; and

(d) obtain samples of materials or packages or labeling thereof.

(2) If the officer or employee obtains a sample, prior to leaving the premises he shall pay or offer to pay the owner, operator, or agent in charge for the sample and give a receipt describing the samples obtained.

History: En. 69-7110 by Sec. 10, Ch. 394, L. 1975; amd. Sec. 32, Ch. 187, L. 1977; R.C.M. 1947, 69-7110(1), (2).

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Prohibition against revealing trade secret information gathered in departmental investigations, 50-30-301.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

50-30-108. Carriers to permit inspection. (1) For the purpose of enforcing the provisions of this chapter, carriers engaged in commerce and persons receiving hazardous substances in commerce or holding such hazardous substances so received shall, upon the request of an officer or employee duly designated by the department, permit such officer or employee at reasonable times to have access to and to copy all records showing the movement in commerce of any such hazardous substances, the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof.

(2) It is unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates, provided that evidence obtained

under this section is not used in a criminal prosecution of the person from whom obtained.

(3) Carriers are not subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of hazardous substances in the usual course of business as carriers.

History: En. 69-7111 by Sec. 11, Ch. 394, L. 1975; R.C.M. 1947, 69-7111.

Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Transportation of hazardous substances by railroads, 69-14-562.

Department to require recordkeeping by transporters of hazardous wastes, 75-10-405.

Part 2

Hazardous Substances

Part Cross-References

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

Montana Pesticides Act, Title 80, ch. 8.

50-30-201. Hazardous substance defined. (1) "Hazardous substance" means:

(a) a substance or mixture of substances which:

(i) is toxic;

(ii) is corrosive;

(iii) is an irritant;

(iv) is a strong sensitizer;

(v) is flammable or combustible; or

(vi) generates pressure through decomposition, heat, or other means if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(b) substances which the department by rule finds under 50-30-215 meet the requirements of subsection (1)(a) of this section;

(c) a radioactive substance if, with respect to the substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health; or

(d) a toy or other article intended for use by children which presents an electrical, mechanical, or thermal hazard as determined by the department by rule in accordance with 50-30-220.

(2) (a) The term "hazardous substance" does not apply to pesticides subject to the federal Pesticide Environmental Control Act or the Montana Pesticides Act, to foods, drugs, and cosmetics subject to the Montana Food, Drug, and Cosmetic Act, or to substances intended for use as fuels when stored

in containers and used in the heating, cooking, or refrigeration system of a house.

(b) The term applies, however, to an article which is not itself a pesticide within the meaning of the federal Pesticide Environmental Control Act or the Montana Pesticide Act but which is a hazardous substance within the meaning of subsection (1) of this section by reason of bearing or containing a pesticide.

(c) The term also applies to pesticides whenever human health is directly affected from the use or misuse of pesticides requiring an accident investigation for the purpose of preparing recommendations to federal or state pesticide control agencies.

(3) The term "hazardous substance" does not include source material, special nuclear material, or byproduct material as defined in the Atomic Energy Act of 1954, as amended, and rules issued pursuant thereto by the atomic energy commission.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(4).

Cross-References

Nuclear regulation, Title 75, ch. 3.

50-30-202. Misbranded hazardous substance defined. (1) "Misbranded hazardous substance" means a hazardous substance (including a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted) intended or packaged in a form suitable for use by the public or by children which, except as otherwise provided under 50-30-216 or 50-30-217, fails to bear a label:

(a) which states conspicuously:

(i) the name and place of business of the manufacturer, packer, distributor, or seller;

(ii) the common or usual name or the chemical name (if there is not a common or usual name) of the hazardous substance or each component which contributes substantially to its hazard unless the department by rule permits or requires the use of a recognized generic name;

(iii) the signal word "danger" on substances which are extremely flammable, corrosive, or highly toxic;

(iv) the signal word on all other hazardous substances;

(v) an affirmative statement of the principal hazard or hazards, such as:

(A) "flammable";

(B) "combustible";

(C) "vapor harmful";

(D) "causes burns";

(E) "absorbed through skin"; or

(F) similar wording descriptive of the hazard;

(vi) precautionary measures describing the action to be followed or avoided, except when modified by a rule of the department under 50-30-216 or 50-30-217;

(vii) instruction, when necessary or appropriate, for first-aid treatment;

(viii) "poison" for any hazardous substance which is defined as "highly toxic" by 50-30-205; and

(ix) instructions for handling and storage of packages which require special care in handling or storage such as:

(A) "keep out of the reach of children" or its practical equivalent; or

(B) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

(b) on which a statement required under subsection (1)(a) of this section is located prominently and is in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(2) The reuse of a food, drug, or cosmetic container as a container for a hazardous substance shall be deemed to be an act which results in the hazardous substance being a misbranded hazardous substance. As used in this subsection, the terms "food", "drug", and "cosmetic" shall have the same meanings as in the Montana Food, Drug, and Cosmetic Act.

History: (1)En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; Sec. 69-7102, R.C.M. 1947; (2)En. 69-7104 by Sec. 4, Ch. 394, L. 1975; Sec. 69-7104, R.C.M. 1947; R.C.M. 1947, 69-7102(13), 69-7104(part).

Cross-References

Montana Food, Drug, and Cosmetic Act, Title 50, ch. 31.

Agricultural seed labeling, Title 80, ch. 5, part 1.

50-30-203. Banned hazardous substance defined. (1) "Banned hazardous substance" means:

(a) a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted; or

(b) a hazardous substance intended or packaged in a form suitable for use by the general public which the department by rule classifies as a banned hazardous substance on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this chapter for that substance, the degree or nature of the hazard involved in the presence or use of the substance by the general public is such that the objective of the protection of the public health and safety can be adequately served only by keeping the substance, when so intended or packaged, out of the channels of commerce.

(2) The department by rule shall exempt from subsection (1)(a) of this section articles such as chemical sets which, by reason of their functional purpose, require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed the directions and warnings.

(3) Proceedings for the issuance, amendment, or repeal of rules under subsections (1)(b) and (2) of this section shall be governed by the provisions of 50-30-219 and 50-30-220.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(14).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-204. Toxic defined. "Toxic" means a substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(5).

50-30-205. Highly toxic defined. (1) "Highly toxic" means a substance which falls within any of the following categories:

(a) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight when orally administered;

(b) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams when inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million or less by volume of gas or vapor or 2 milligrams per liter or less by volume of mist or dust if that concentration is likely to be encountered by man when the substance is used in a reasonably foreseeable manner; or

(c) produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less.

(2) If the department finds that available data on human experience with a substance indicates results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(6).

50-30-206. Corrosive defined. "Corrosive" means a substance which in contact with living tissue will cause destruction of tissue by chemical action but does not refer to action on inanimate surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(7).

50-30-207. Irritant defined. "Irritant" means a substance not corrosive within the meaning of 50-30-206 which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(8).

50-30-208. Strong sensitizer defined. "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(9).

50-30-209. Extremely flammable, flammable, and combustible defined. (1) "Extremely flammable" applies to a substance which has a flash point at or below 20 degrees F, as determined by the Tagliabue open cup tester.

(2) "Flammable" applies to a substance which has a flash point above 20 degrees to and including 80 degrees F, as determined by the Tagliabue open cup tester.

(3) "Combustible" applies to a substance which has a flash point above 80 degrees to and including 150 degrees F, as determined by the Tagliabue open cup tester.

(4) The flammability or combustibility of solids and the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to the materials or containers, respectively, and established by rules issued by the department, which rules shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with the methods used.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(10).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-210. Radioactive substance defined. "Radioactive substance" means a substance which emits ionizing radiation.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(11).

Cross-References

Nuclear regulation, Title 75, ch. 3.

50-30-211. Label defined. "Label" means a display of written, printed, or graphic matter upon the immediate container ("immediate container" does not include package liners) of a substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).

Cross-References

Labeling of flour, 30-12-302.

Agricultural seed labeling, Title 80, ch. 5, part 1.

Montana quality label, Title 81, ch. 8, part 7.

50-30-212. Electrical hazards. An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(15).

50-30-213. Mechanical hazards. An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(1) from fracture, fragmentation, or disassembly of the article;

(2) from propulsion of the article (or a part or accessory thereof);

(3) from points or other protrusions, surfaces, edges, openings, or closures;

(4) from moving parts;

(5) from lack or insufficiency of controls to reduce or stop motion;

(6) as a result of self-adhering characteristics of the article;

(7) because the article (or a part or accessory thereof) may be aspirated or ingested;

(8) because of instability; or

(9) because of any other aspect of the article's design or manufacture.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(16).

50-30-214. Thermal hazards. An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(17).

50-30-215. Declaration of hazardous substance. When in the judgment of the department such action will promote the objectives of this chapter by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance a substance or mixture of substances which the department finds meets the requirements of 50-30-201(1)(a).

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-216. Additional labeling requirements. If the department finds that the requirements of 50-30-202(1)(a) are not adequate for the protection of the public health and safety in view of the special hazard presented by a hazardous substance, the department may by rule establish such reasonable variations or additional labeling requirements as are necessary for the protection of the public health and safety, and a hazardous substance intended or packaged in a form suitable for use by the general public or by children which fails to bear a label in accordance with the rules is a misbranded hazardous substance.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(2).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Agricultural seed labeling, Title 80, ch. 5, part 1.

50-30-217. Exemption from labeling requirements. If the department finds that because of the size of the package involved, because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons full compliance with the labeling requirements otherwise applicable under this chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the department shall adopt rules exempting the substance from these requirements to the extent of being consistent with adequate protection of the public health and safety.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(3).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-30-218. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information appear on the label shall not be considered to be complied with unless the word, statement, or other information also appears:

(1) on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper; and

(2) on all accompanying literature where there are directions for use, written or otherwise.

History: En. 69-7102 by Sec. 2, Ch. 394, L. 1975; amd. Sec. 27, Ch. 187, L. 1977; R.C.M. 1947, 69-7102(part (12)).

50-30-219. Ban of hazardous substance authorized. If the department finds that the hazard of an article subject to this chapter is such that labeling adequate to protect the public health and safety cannot be devised or the article presents an imminent danger to the public health and safety, the department may declare the article a banned hazardous substance and require its removal from commerce.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(4).

Cross-References

"Banned hazardous substance" defined, 50-30-203.

50-30-220. Toys and other children's articles. (1) A determination by the department that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by rule in accordance with this chapter.

(2) If, before or during a proceeding under subsection (1) of this section, the department finds that because of an electrical, mechanical, or thermal hazard distribution of a toy or other article involved presents an imminent hazard to the public health and the department gives notice of the finding, the toy or other article is a banned hazardous substance for purposes of this

chapter until the proceeding has been completed. If not yet initiated when the notice is given, the proceeding shall be initiated as promptly as possible.

(3) (a) In the case of a toy or other article intended for use by children which is determined by the department to present an electrical, mechanical, or thermal hazard, a person who will be adversely affected by the determination may, at any time before the 60th day after the rule making the determination is issued by the department, file a petition with the court for a judicial review of the determination. A copy of the petition shall be immediately transmitted by the clerk of the court to the department. The department shall file in the court the record of the proceedings on which the department based its determination.

(b) If the petitioner applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was no opportunity to adduce the evidence in the proceeding before the department, the court may order the additional evidence (and evidence in rebuttal thereof) to be taken before the department in a hearing or in another manner and upon other terms and conditions as the court considers proper. The department may modify its findings as to the facts or make new findings by reason of the additional evidence so taken, and it shall file the modified or new findings and its recommendation, if any, for the modification or setting aside of its original determination with the return of the additional evidence.

(c) Upon the filing of the petition under subsection (3) of this section, the court has jurisdiction to review the determination of the department. If the court ordered additional evidence to be taken under subsection (3)(b) of this section, the court shall also review the department's determination to determine if, on the basis of the entire record before the court under subsections (3)(a) and (3)(b) of this section, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to a determination reviewed under subsection (3) of this section, the court may grant appropriate relief pending conclusion of the review proceedings.

History: En. 69-7103 by Sec. 3, Ch. 394, L. 1975; amd. Sec. 28, Ch. 187, L. 1977; R.C.M. 1947, 69-7103(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Electrical hazard, 50-30-212.

Mechanical hazard, 50-30-213.

Thermal hazard, 50-30-214.

Part 3

Prohibited Acts, Penalties, and Remedies

50-30-301. Prohibited acts. The following acts and the causing thereof are prohibited:

(1) the introduction or delivery for introduction into commerce of any misbranded hazardous substance or banned hazardous substance;

(2) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the label of or the doing of any other act with respect to a hazardous substance if such act is done while the substance is in commerce or while the substance is held for sale (whether or not the first sale) after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) the receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or proffered delivery thereof for pay or otherwise;

(4) the giving of a guarantee or undertaking referred to in 50-30-305(2), which guarantee or undertaking is false, except by a person who relies upon a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance;

(5) the failure to permit entry or inspection as authorized by 50-30-107(1) or to permit access to any copying of any record as authorized by 50-30-108;

(6) the introduction or delivery for introduction into commerce or the receipt in commerce and subsequent delivery or proffered delivery for pay or otherwise of a hazardous substance in a reused food, drug, or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug, or cosmetic container by its labeling or by other identification;

(7) the use by any person to his own advantage or revealing other than to the department or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this chapter of any information acquired under authority of 50-30-106 and 50-30-107 concerning any method or process which as a trade secret is entitled to protection.

History: En. 69-7104 by Sec. 4, Ch. 394, L. 1975; R.C.M. 1947, 69-7104(part); amd. Sec. 7, Ch. 37, L. 1979.

Cross-References

"Misbranded hazardous substance" defined, 50-30-202.

"Banned hazardous substance" defined, 50-30-203.

50-30-302. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Office of County Attorney, Title 7, ch. 4, part 27.

50-30-303. Department and county attorney to prosecute violations. It is the duty of the department or the county attorney to whom the department reports a violation of this chapter to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. 69-7108 by Sec. 8, Ch. 394, L. 1975; amd. Sec. 31, Ch. 187, L. 1977; R.C.M. 1947, 69-7108(part).

Cross-References

Duty of County Attorney in state matters, 7-4-2716.

50-30-304. Penalty. A person who violates the provisions of 50-30-301 is guilty of a misdemeanor and shall be fined no more than $500 or be imprisoned for any term not to exceed 90 days, or both. For offenses committed with intent to defraud or mislead or for second and subsequent offenses, the penalty shall be imprisonment for any term not to exceed 1 year or a fine of no more than $3,000, or both.

History: En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(1).

Cross-References

Liability for damages for deceit, 27-1-712.

50-30-305. Exceptions to penalty. No person is subject to the penalties of 50-30-304:

(1) for having violated 50-30-301(3) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith unless he refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom he purchased or received the hazardous substance and copies of all documents pertaining to the delivery of the hazardous substance to him; or

(2) for having violated 50-30-301(1) if he establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded or banned hazardous substance within the meaning of those terms in this chapter.

History: En. 69-7105 by Sec. 5, Ch. 394, L. 1975; amd. Sec. 29, Ch. 187, L. 1977; R.C.M. 1947, 69-7105(2).

Cross-References

"Misbranded hazardous substance" defined, 50-30-202.

"Banned hazardous substance" defined, 50-30-203.

50-30-306. Injunction authorized. In addition to the remedies hereinafter provided, the department is authorized to apply to court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-30-301, irrespective of whether or not there exists an adequate remedy at law.

History: En. 69-7106 by Sec. 6, Ch. 394, L. 1975; R.C.M. 1947, 69-7106.

Cross-References

Injunctions, Title 27, ch. 19.

50-30-307. Detainer of misbranded or banned hazardous substance. (1) If a duly authorized agent of the department finds or has probable cause to believe that a hazardous substance is misbranded or is a banned hazardous substance within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be misbranded or a banned hazardous substance, he shall petition the judge of the city, justice's, or district court in whose jurisdiction the article is detained or embargoed for an order of condemnation of the article. If the agent finds that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(3) (a) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under supervision of the agent, and all court costs and fees and storage and other proper expenses are to be taxed against the claimant of the article or his agent.

(b) If the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling under the supervision of an agent of the department. The expense of the supervision shall be paid by the claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: En. 69-7107 by Sec. 7, Ch. 394, L. 1975; amd. Sec. 30, Ch. 187, L. 1977; R.C.M. 1947, 69-7107.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Justices' Courts jurisdiction, Title 3, ch. 10, part 3.

City Court jurisdiction, Title 3, ch. 11, part 1.

CHAPTER 31

MONTANA FOOD, DRUG, AND COSMETIC ACT

Part 1 — General Provisions

50-31-101. Short title.
50-31-102. Applicability of chapter.
50-31-103. Definitions.

50-31-104. Department authorized to adopt rules.
50-31-105. Publication of information by department.
50-31-106. Inspections and taking of samples authorized.
50-31-107. False or misleading representations.
50-31-108. Regulations concerning additives.
50-31-109. Use of additives.
50-31-110. Certain agricultural chemicals not color additives.
50-31-111. When labeling requirement complied with.

Part 2 — Food and Bottled Water

50-31-201. Department authorized to adopt food standards.
50-31-202. When food adulterated.
50-31-203. When food misbranded.
50-31-204. Labeling requirements for products in semblance of honey or containing honey.
50-31-205. Permits for manufacture, processing, and packing of foods.
50-31-206. Permitholder to allow inspections.
50-31-207. Suspension of permit.
50-31-208. Sale of hamburger and beef patty mix.
50-31-209 through 50-31-220 reserved.
50-31-221. Short title.
50-31-222. Organic food defined.
50-31-223. Requirements for labeling.
50-31-224 through 50-31-230 reserved.
50-31-231. Injunctive relief.
50-31-232 through 50-31-235 reserved.
50-31-236. Labeling requirements for bottled water.
50-31-237. Health claims for bottled water.
50-31-238. Misrepresentation of a company name.

Part 3 — Drugs and Devices

50-31-301. Definitions.
50-31-302. Antiseptics considered to be germicides.
50-31-303. Certain drug advertisements considered false.
50-31-304. Certain drugs and devices exempt from labeling requirements of chapter.
50-31-305. When drug or device adulterated.
50-31-306. When drug or device misbranded.
50-31-307. Dispensing of prescription drugs.
50-31-308. Prescription drugs exempt from certain provisions of chapter.
50-31-309. Removal of drugs from prescription requirement.
50-31-310. Narcotic and marijuana laws not affected.
50-31-311. New drug application required.
50-31-312. Exemptions from new drug application requirement.
50-31-313. Code imprint required on legend drugs.
50-31-314. Exemptions from code imprint requirement.
50-31-315. List of code imprints to be provided.

Part 4 — Cosmetics

50-31-401. When cosmetic adulterated.
50-31-402. When cosmetic misbranded.
50-31-403. Exceptions for hair dyes.
50-31-404. Term hair dye not to include eyelash or eyebrow dyes.

Part 5 — Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts.
50-31-502. Unlawful labeling of products resembling honey.
50-31-503. Prosecution of minor violations not required.
50-31-504. Notice and hearing required prior to prosecution.
50-31-505. Duty of state or county attorneys to prosecute.
50-31-506. Penalties.

50-31-507. Exceptions to penalties.
50-31-508. Injunction to restrain prohibited acts.
50-31-509. Detainer of adulterated or misbranded articles.
50-31-510. Condemnation of perishables.

Chapter Cross-References

Control of food and other commodities during an emergency, 10-3-505.

Warranty provisions under the Uniform Commercial Code, 30-2-312 through 30-2-318.

Weights, measures, standards, and labeling, Title 30, ch. 12.

Unfair trade practices and consumer protection, Title 30, ch. 14.

Regulation of standards and sale of grain, seed, commercial feeds, and fertilizer — regulation of itinerant produce merchants and produce wholesalers — inspection, grading, and packing of apples, Title 80, ch. 3, 4, 9, and 10.

Montana quality labels — regulation of poultry, eggs, and egg dealers — regulation of manufactured dairy products, Title 81, ch. 8, 20, and 22.

Part 1

General Provisions

50-31-101. Short title. This chapter may be cited as the "Montana Food, Drug, and Cosmetic Act".

History: En. Sec.1, Ch. 307, L. 1967; R.C.M. 1947, 27-701.

50-31-102. Applicability of chapter. The provisions of this chapter regarding the selling of food, drugs, devices, or cosmetics shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of these articles for sale; the sale, dispensing, and giving of these articles; and the supplying or applying of these articles in the conduct of a food, drug, or cosmetic establishment.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(q).

50-31-103. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Advertisement" means representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

(2) "Approved source" means water from a spring, artesian well, drilled well, municipal water supply, or other source that has been found by the department to be of a safe and sanitary quality.

(3) "Artesian water" means water that is forced from below the ground toward the surface through a well by natural underground pressure.

(4) "Beef patty mix" means "hamburger" or "ground beef" to which have been added binders or extenders as those terms are understood by general custom and usage in the food industry.

(5) "Bottled water" means carbonated, demineralized, distilled, fluoridated, mineral, purified, sparkling, or other water that is from an approved

source that is disinfected and placed in a sealed container or package for human consumption.

(6) "Carbonated water" or "sparkling water" means water that contains carbon dioxide.

(7) "Color" includes black, white, and intermediate grays.

(8) (a) "Color additive" means a material which:

(i) is a dye, pigment, or other substance made by a process of synthesis or similar artifice or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or

(ii) when added or applied to a food, drug, or cosmetic or to the human body is capable (alone or through reaction with other substance) of imparting color thereto.

(b) This term does not include material which has been or is exempted under the federal act.

(9) "Consumer commodity", except as otherwise specifically provided by this subsection, means any food, drug, device, or cosmetic as those terms are defined by this chapter or by the federal act and regulations pursuant thereto. The term does not include:

(a) any tobacco or tobacco product;

(b) a commodity subject to packaging or labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157), commonly known as the virus, serum, and toxin act;

(c) a drug subject to 50-31-306(1)(m) or 50-31-307(2)(c) or section 503(b)(1) or 506 of the federal act;

(d) a beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or

(e) a commodity subject to the Federal Seed Act (7 U.S.C. 1551-1610).

(10) "Contaminated with filth" applies to a food, drug, device, or cosmetic not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from foreign or injurious contaminations.

(11) "Cosmetic" means:

(a) articles intended to be rubbed, poured, sprinkled, sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) articles intended for use as a component of these articles, except that the term does not include soap.

(12) "Counterfeit drug" means a drug, drug container, or drug label which, without authorization bears the trademark, trade name, or other identifying mark, imprint, or device or any likeness thereof of a drug manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, or distributed the drug and which falsely purports or is represented to be the product of or to have been packed or distributed by the other drug manufacturer, processor, packer, or distributor.

(13) "Demineralized water" means water that has been demineralized by distillation, deionization, reverse osmosis, or other methods and contains not more than 10 parts per million total solids.

(14) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(15) "Device" (except when used in 50-31-107(2), 50-31-203(6), 50-31-306(1)(c) and (1)(q), 50-31-402(3), and 50-31-501(10)) means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended:

(a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(b) to affect the structure or function of the body of man or other animals.

(16) "Distilled water" means purified water that has been vaporized and condensed.

(17) "Drinking water" means water that has undergone purification, distillation, demineralization, mineralization, activated carbon or particulate filtration, fluoridation, carbonation, or other similar process or has undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

(18) "Drug" means:

(a) articles recognized in the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these;

(b) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals;

(c) articles (other than food) intended to affect the structure or function of the body of man or other animals;

(d) articles intended for use as components of any article specified in subsections (a), (b), or (c) but does not include devices or their components, parts, or accessories.

(19) "Federal act" means the Federal Food, Drug, and Cosmetic Act, as amended (Title 21 U.S.C. 301, et seq.).

(20) "Fluoridated water" means water that contains, naturally or by addition, fluoride ions in quantities of not less than 0.7 and not more than 1.4 milligrams per liter and complies with the food and drug administration quality standards set forth in 21 CFR 103.35.

(21) "Food" means:

(a) articles used for food or drink for man or other animals;

(b) chewing gum; and

(c) articles used for components of these articles.

(22) (a) "Food additive" means a substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food (including a substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food and including a source of radiation intended for this use), if the substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to

January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

(b) This term does not include:

(i) a pesticide chemical in or on a raw agricultural commodity;

(ii) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of a raw agricultural commodity;

(iii) a color additive;

(iv) a substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act, the Poultry Products Inspection Act (21 U.S.C. 451, et seq.), or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71, et seq.).

(23) "Food service establishment" means a restaurant, catering vehicle, vending machine, delicatessen, fast-food retailer, or any other place that serves food to the public for consumption either at or away from the point of service, and any facility operated by a governmental entity where food is served.

(24) "Hamburger" or "ground beef" means ground fresh or frozen beef or a combination of both fresh and frozen beef, with or without the addition of suet, to which no water, binders, or extenders are added. There are four grades of hamburger or ground beef:

(a) "regular hamburger" or "regular ground beef" may have:

(i) a fat content no greater than the federal standard set forth in 9 C.F.R. 319.15; and

(ii) a lean content of no less than 70%;

(b) "lean hamburger" or "lean ground beef" may have:

(i) a fat content no greater than 22%; and

(ii) a lean content of no less than 78%;

(c) "extra lean hamburger" or "extra lean ground beef" may have:

(i) a fat content no greater than 16%; and

(ii) a lean content of no less than 84%; and

(d) "super lean hamburger" or "super lean ground beef" may have:

(i) a fat content no greater than 12%; and

(ii) a lean content of no less than 88%.

(25) "Honey" means the nectar and saccharine exudations of plants gathered, modified, and stored in the comb by honey bees; is levorotatory, contains not more than 25% of water, not more than .25% of ash, and not more than 8% sucrose.

(26) "Label" means a display of written, printed, or graphic matter on the immediate container of an article. ("Immediate container" does not include package liners.)

(27) "Labeling" means labels and other written, printed, or graphic matter:

(a) on an article or its containers or wrappers;

(b) accompanying the article.

(28) "Menu" means any list presented to the patron which states the food items for sale in a food service establishment.

(29) "Mineral water" means water that contains more than 500 parts per million total dissolved mineral solids.

(30) "New drug" means a drug, the composition of which is such that:

(a) it is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in its labeling; or

(b) the drug, as a result of investigations to determine its safety and effectiveness for use under the conditions prescribed, has become so recognized but which has not, otherwise than in the investigations, been used to a material extent or for a material time under the conditions prescribed.

(31) "Official compendium" means the official United States Pharmacopoeia, official National Formulary, or a supplement to either of these.

(32) "Organic food" means food that conforms to the definition in 50-31-222.

(33) "Package" means a container or wrapping in which a consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers but does not include:

(a) shipping containers or wrappings used solely for the transportation of a consumer commodity in bulk or in quantity to manufacturers, packers, or processors or to wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver a commodity to retail customers if the containers and wrappings bear no printed matter pertaining to a particular commodity.

(34) "Person" includes an individual, partnership, corporation, and association.

(35) "Pesticide chemical" means a substance which alone, in chemical combination, or in formulation with one or more other substances is an "economic poison" under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C., secs. 135-135k), as amended, and which is used in the production, storage, or transportation of raw agricultural commodities.

(36) "Placard" means any nonpermanent sign used to display or describe food items for sale in a food service establishment or retail establishment.

(37) "Principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.

(38) "Processing" means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food, and the enclosure of such food in a package.

(39) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method and that meets the definition of purified water in the 20th edition of the pharmacopoeia of the United States of America, 1980.

(40) "Raw agricultural commodity" means food in its raw or natural state, including fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.

(41) "Retail establishment" means a commercial establishment at which meat or meat products are displayed for sale or provision to the public, with or without charge.

(42) "Spring water" means water that originates in an underground formation and flows naturally, without external force or vacuum, to a natural orifice in the surface of the earth.

(43) "State board" or "board" means the board of health and environmental sciences provided for in 2-15-2104.

(44) "Synthetically compounded" means a product formulated by a process that chemically changes a material or substance extracted from naturally occurring plant, animal, or mineral sources, except for microbiological processes.

(45) "Water-bottling plant" means any facility in which bottled water is produced.

(46) "Well water" means water that:

(a) is taken from below the ground through a piping device or similar installed device utilizing external force or vacuum;

(b) is not modified in its mineral content; and

(c) may have undergone minimum treatment consisting of ozonization or an acceptable disinfection process.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(part); amd. Sec. 8, Ch. 37, L. 1979; amd. Sec. 1, Ch. 456, L. 1979; amd. Sec. 1, Ch. 361, L. 1981; amd. Sec. 1, Ch. 605, L. 1985; amd. Sec. 1, Ch. 169, L. 1989; amd. Sec. 4, Ch. 472, L. 1989; amd. Sec. 1, Ch. 133, L. 1991.

Compiler's Comments

1991 Amendment: In definition of hamburger increased from three to four the number of grades, substituted "regular hamburger" for "economy hamburger" and set lean content at no less than 70%, substituted "lean hamburger" for "regular hamburger" and set fat content at no greater than 22% and lean content at no less than 78%, decreased extra lean hamburger fat content from 18% to 16% and set lean content at no less than 84%, and inserted definition of super lean hamburger with fat content no greater than 12% and lean content no less than 88%; and made minor changes in style. Amendment effective March 20, 1991.

50-31-104. Department authorized to adopt rules. (1) The department may adopt rules for the efficient enforcement of this chapter. The department may adopt by reference the regulations adopted by the food and drug administration under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

(2) No hearing is required for adoption by reference of those regulations adopted under the federal act and the Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.).

History: En. Sec. 21, Ch. 307, L. 1967; amd. Sec. 3, Ch. 171, L. 1971; amd. Sec. 4, Ch. 349, L. 1974; R.C.M. 1947, 27-721.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-105. Publication of information by department. (1) The department may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof.

(2) The department may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the department deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the department from collecting, reporting, and illustrating the results of the investigations of the department.

History: En. Sec. 23, Ch. 307, L. 1967; R.C.M. 1947, 27-723.

50-31-106. Inspections and taking of samples authorized. (1) The department or its authorized agents have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce or to any vehicle being used to transport or hold the foods, drugs, devices, or cosmetics in commerce, for the purpose of:

(a) inspecting the factory, warehouse, establishment, or vehicle to determine if any of the provisions of this chapter are being violated; and

(b) securing samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for the sample.

(2) The department shall make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this chapter is being violated.

History: En. Sec. 22, Ch. 307, L. 1967; amd. Sec. 3, Ch. 187, L. 1977; R.C.M. 1947, 27-722.

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Refusal to allow entry or inspection prohibited, 50-31-501.

50-31-107. False or misleading representations. (1) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(2) If an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or a combination of these but also the extent to which the labeling or advertisement fails to reveal facts material in the light of the representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement or under conditions of use as are customary or usual.

History: (1)En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-720, R.C.M. 1947; (2)En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; Sec. 27-702, R.C.M. 1947; R.C.M. 1947, 27-702(l), 27-720(a).

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

Specific drug advertisements considered false, 50-31-303.

50-31-108. Regulations concerning additives. (1) The department, upon its own motion or upon the petition of any interested party requesting that such a regulation be established, whenever public health or other considerations in the state so require, is authorized to adopt, amend, or repeal regulations, whether or not in accordance with regulations promulgated under the federal act, prescribing tolerances for any added poisonous or deleterious substances for food additives, for pesticide chemicals in or on raw agricultural commodities, or for color additives, including but not limited to zero tolerances and exemptions from tolerances in the case of pesticide chemicals in or on raw agricultural commodities and prescribing the conditions under which a food additive or a color additive may be safely used and exemptions where such food additive or color additive is to be used solely for investigational or experimental purposes.

(2) It shall be incumbent upon such petitioner to establish by data submitted to the department that a necessity exists for such regulation and that its effect will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the department to determine whether such regulation should be promulgated, the department may require additional data to be submitted and failure to comply with the request shall be sufficient grounds to deny the request.

(3) In adopting, amending, or repealing regulations relating to such substances the department shall consider among other relevant factors the following which the petitioner, if any, shall furnish:

(a) the name and all pertinent information concerning such substance including, where available, its chemical identity and composition, a statement of the conditions of the proposed use, including directions, recommendations, and suggestions and including specimens of proposed labeling, all relevant data bearing on the physical or other technical effect and the quantity required to produce such effect;

(b) the probable composition of or other relevant exposure from the article and of any substance formed in or on a food, drug, or cosmetic resulting from the use of such substance;

(c) the probable consumption of such substance in the diet of man and animals taking into account any chemically or pharmacologically related substance in such diet;

(d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of such substances for the use or uses for which they are proposed to be used, are generally recognized as appropriate for the use of animal experimentation data;

(e) the availability of any needed practicable methods of analysis for determining the identity and quantity of:

(i) such substance in or on an article;

(ii) any substance formed in or on such article because of the use of such substance; and

(iii) the pure substance and all intermediates and impurities; and

(f) facts supporting a contention that the proposed use of such substance will serve a useful purpose.

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(b).

Cross-References

Misbranding drugs or devices, 50-31-306.

50-31-109. Use of additives. Any added poisonous or deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity, or any color additive shall, with respect to any particular use or intended use, be deemed unsafe for the purpose of application of 50-31-202(2) with respect to any food, 50-31-305(1) through (5) with respect to any drug or device, or 50-31-401(1) with respect to any cosmetic unless there is in effect a regulation pursuant to 50-31-108 limiting the quantity of such substance and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulation relating to such substance is in effect, a food, drug, or cosmetic shall not by reason of bearing or containing such substance in accordance with the regulation be considered adulterated within the meaning of 50-31-202(1), 50-31-305(1) through (5), or 50-31-401(1).

History: En. Sec. 13, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-713(a).

50-31-110. Certain agricultural chemicals not color additives. Subsections (7) and (8) of 50-31-103 do not apply to a pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(u)(3); amd. Sec. 3, Ch. 361, L. 1981; amd. Sec. 5, Ch. 169, L. 1989.

50-31-111. When labeling requirement complied with. A requirement made by or under authority of this chapter that a word, statement, or other information shall appear on the label is not complied with unless the word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of the article or is easily legible through the outside container or wrapper.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(i)(part); amd. Sec. 9, Ch. 37, L. 1979.

Cross-References

Agricultural seed labeling, Title 80, ch. 5, part 1.

Part 2

Food and Bottled Water

Part Cross-References

Municipal power to inspect foodstuffs and regulate soft drink establishments, 7-21-4201, 7-21-4202.

Control of food and other commodities during an emergency, 10-3-505.

Immunity of persons donating food for free distribution, 27-1-716.

Supervision and regulation of the milk industry, Title 81, ch. 23, parts 1 through 4.

50-31-201. Department authorized to adopt food standards. (1) Whenever in the judgment of the department such action will promote honesty and fair dealing in the interest of consumers, the department shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, standard of quality, and/or fill of container.

(2) In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the department shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label.

(3) The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act, or the department may promulgate by reference the definitions and standards promulgated under authority of the federal act.

History: En. Sec. 9, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-709.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-202. When food adulterated. A food shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such food shall not be considered adulterated under this subsection if the quantity of such substance in such food does not ordinarily render it injurious to health;

(2) it bears or contains any added poisonous or added deleterious substance, other than one which is:

(a) a pesticide chemical in or on a raw agricultural commodity;

(b) a food additive; or

(c) a color additive, which is unsafe within the meaning of 50-31-109;

(3) it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of section 408(a) of the federal act as amended;

(4) it is or it bears or contains any food additive which is unsafe within the meaning of section 409 of the federal act as amended; provided that where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 408 of the federal act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed

food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity;

(5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance or if it is otherwise unfit for food;

(6) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered diseased, unwholesome, or injurious to health;

(7) it is the product of a diseased animal or an animal which has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

(8) its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(9) any valuable constituent has been in whole or in part omitted or abstracted therefrom;

(10) any substance has been substituted wholly or in part therefor;

(11) damage or inferiority has been concealed in any manner;

(12) any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

(13) it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of .4%, harmless natural wax not in excess of .4%, or harmless natural gum and pectin; provided that this paragraph shall not apply to any confectionery by reason of its containing less than .5% by volume of alcohol derived solely from the use of flavoring extracts or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances;

(14) it is or bears or contains any color additive which is unsafe within the meaning of the federal act.

History: **En. Sec. 10, Ch. 307, L. 1967; R.C.M. 1947, 27-710.**

Cross-References

Deceptive business practices, 45-6-318.

Montana Pesticides Act, Title 80, ch. 8.

50-31-203. When food misbranded. A food shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) it is offered for sale under the name of another food;

(3) it is an imitation of another food for which a definition and standard of identity has been prescribed by regulations as provided by 50-31-201 or if it is an imitation of another food that is not subject to subsection (7) of this section, unless its label bears in type of uniform size and prominence the word imitation and, immediately thereafter, the name of the food imitated;

(4) its container is so made, formed, or filled as to be misleading;

(5) in package form, unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor;

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(6) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(7) it purports to be or is represented as a food for which a definition and standard of identity have been prescribed by regulations as provided by 50-31-201, unless:

(a) it conforms to such definition and standard; and

(b) its label bears the name of the food specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food;

(8) it purports to be or is represented as:

(a) a food for which a standard of quality has been prescribed by regulations as provided by 50-31-201 and its quality falls below such standard, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(b) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by 50-31-201 and it falls below the standard of fill of container applicable, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

(9) it is not subject to the provisions of subsection (7) of this section unless it bears labeling clearly giving:

(a) the common or usual name of the food, if any there be; and

(b) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each; provided that to the extent that compliance with the requirements of subsection (9)(b) is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the department; and provided further that the requirements of subsection (9)(b) shall not apply to food products which are packaged at the direction of purchasers at retail at the time of sale, the ingredients of which are disclosed to the purchasers by other means in accordance with regulations promulgated by the department;

(10) it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the department determines to be and by regulations prescribes as necessary in order to fully inform purchasers as to its value for such uses;

(11) it bears or contains any artificial flavoring, artificial coloring, or chemical preservative unless it bears labeling stating that fact; provided that the extent that compliance with the requirements of this subsection is im-

practicable, exemptions shall be established by regulations promulgated by the department. Butter, cheese, ice cream, and frozen desserts as defined in 81-22-101 shall be exempt from label statements for artificial flavoring and artificial coloring.

(12) it is a product intended as an ingredient of another food and when used according to the directions of the purveyor will result in the final food product being adulterated or misbranded;

(13) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act;

(14) it is labeled "organic", "organically grown", "naturally grown", "ecologically grown", or "biologically grown" but does not conform to the definition in 50-31-222.

History: En. Sec. 11, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-711; amd. Sec. 2, Ch. 605, L. 1985.

Cross-References

Deceptive business practices, 45-6-318.

50-31-204. Labeling requirements for products in semblance of honey or containing honey. (1) Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word "honey". The word "imitation" may not be used in the name of a product which is in semblance of honey whether or not it contains any honey.

(2) The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product. The relative position of the word "honey" in the product name and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

Cross-References

Deceptive business practices, 45-6-318.

Labeling violations penalties, 50-31-506.

Injunctive remedies, 50-31-508.

50-31-205. Permits for manufacture, processing, and packing of foods. (1) Whenever the department finds after investigation that the distribution in Montana of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then, and in such case only, shall promulgate regulations providing for the issuance to manufacturers, processors, or packers of such class of food in such locality of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food for such temporary period of time as may be necessary to protect the public health.

(2) After the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed, or packed by any such manufacturer,

processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the department as provided by such regulations.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(a).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-206. Permitholder to allow inspections. Any officer or employee duly designated by the department shall have access to any factory or establishment, the operator of which holds a permit from the department, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(c).

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-31-207. Suspension of permit. The department is authorized to suspend immediately upon notice any permit issued under authority of 50-31-205 if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the department shall, immediately after prompt hearing and inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

History: En. Sec. 12, Ch. 307, L. 1967; R.C.M. 1947, 27-712(b).

50-31-208. Sale of hamburger and beef patty mix. (1) No food service establishment or retail establishment may use the terms “hamburger”, “burger”, or other similar term in any advertisement or menu to refer to any beef patty mix. A food service establishment or retail establishment selling or serving beef patty mix may refer to the product as “beef patty mix” or by any other term which accurately informs the customer of the nature of the food product which he is sold or served.

(2) If beef patty mix is sold or served in a food service establishment or retail establishment, a list of ingredients must appear on the menu or label, or, if there is no menu or label, on a placard as follows:

(a) The term “beef patty mix” or any other term which accurately informs the customer of the nature of the food product and its ingredients must be included.

(b) The ingredients must be listed in descending order of predominance by weight.

(c) If there is no menu or label, the lettering on the placard must be at least 1 inch in height (72-point letters) in boldface and in colors that contrast with the placard.

(d) The placard must be posted in a permanent place, conspicuous to the customer, in each room or area where food is served or sold at retail.

(3) If hamburger or ground beef is sold in a retail establishment, the grade, as defined in 50-31-103(24), and the maximum fat and minimum lean content must appear on each displayed package or, if the product is not packaged for display, on a placard. If a placard is used, it must satisfy the requirements of subsections (2)(c) and (2)(d) of this section. The provisions of this subsection do not apply to the service of prepared hamburger or ground beef at a food service establishment.

History: En. Sec. 5, Ch. 456, L. 1979; amd. Sec. 2, Ch. 361, L. 1981; amd. Sec. 6, Ch. 169, L. 1989; amd. Sec. 2, Ch. 133, L. 1991.

Compiler's Comments

1991 Amendment: In (3), near beginning after "maximum fat", inserted "and minimum lean". Amendment effective March 20, 1991.

Cross-References

Penalties for violation, 50-31-506.

Injunctive remedies, 50-31-508.

50-31-209 through 50-31-220 reserved.

50-31-221. Short title. Sections 50-31-221 through 50-31-223 and 50-31-231 may be cited as the "Montana Truth in Labeling Act for Organic Foods".

History: En. Sec. 3, Ch. 605, L. 1985.

50-31-222. Organic food defined. Organic food is food that:

(1) was produced, harvested, cleaned, stored, distributed, processed, and packaged without application of synthetically compounded fertilizers, pesticides, herbicides, fungicides, growth regulators, aromatic petroleum solvents, diesel and other petroleum fractions, or other synthetically compounded substances, and without being preserved by irradiation;

(2) was produced, harvested, cleaned, stored, distributed, processed, and packaged with application of only microorganisms, microbiological products, and materials consisting of or derived or extracted solely from plant, animal, or mineral-bearing rock substances, including but not limited to Bordeaux mixtures and trace elements, soluble kelp, lime, sulfur, gypsum, dormant oils, summer oils, fish emulsion, soap, green manure, compost, and animal manures, and ascorbic acid, sodium ascorbate, calcium ascorbate, and citric acid used in processing;

(3) contains no added coloring or synthetically compounded material;

(4) does not contain pesticide residue in excess of 10% of the level regarded as safe by the U.S. food and drug administration;

(5) in the case of perennial crops, was grown in fields to which no synthetically compounded substances were applied for 24 months before the appearance of flower buds and throughout the entire growing and harvesting season of the crop;

(6) in the case of annual crops and 2-year crops, was grown in fields to which no synthetically compounded substances or growth regulators were applied for 24 months before planting or transplanting and throughout the entire growing and harvesting season of the crop;

(7) in the case of meat, poultry, or fish, was raised for at least the final 60% of its life:

(a) on food produced in conformity with subsection (5) or (6);

(b) without the use of any chemical or drug to stimulate or regulate growth or tenderness; and

(c) without any drug or antibiotic administered or introduced by injection or ingestion, except for treatment of a specific disease or malady not less than 90 days before the slaughter of such animal, bird, or fish; and

(8) in the case of milk or eggs, was produced by animals raised in accordance with subsection (7) except that no chemical, drug, or antibiotic was administered or introduced less than 30 days before the production of such milk or eggs.

History: En. Sec. 4, Ch. 605, L. 1985.

Cross-References

"Processing" and "synthetically compounded" defined, 50-31-103.

50-31-223. Requirements for labeling. (1) No claim or implication may be made in the labeling, advertising, or promotion of raw or processed food products, meat, fish, poultry, milk, eggs, or seeds that the food is organic, organically grown, naturally grown, ecologically grown, or biologically grown unless it conforms to the definition set forth in 50-31-222.

(2) Packaged organic food must be labeled as follows, or with substantially similar language: "ORGANIC FOOD AS DEFINED IN MONTANA LAW (50-31-222, MCA)".

History: En. Sec. 5, Ch. 605, L. 1985.

50-31-224 through 50-31-230 reserved.

50-31-231. Injunctive relief. (1) In addition to the remedies provided in 50-31-509, any person may bring an action in district court pursuant to this section, and the district court has jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-223. The court may award attorney fees to the prevailing party in the action.

(2) The prohibition provided in 50-31-223 does not apply to any wholesale or retail distributor who in good faith makes the same representations on a package or label or in advertising or promotion as have been made by the manufacturer, distributor, or other person providing the food to that wholesale or retail distributor.

History: En. Sec. 6, Ch. 605, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

50-31-232 through 50-31-235 reserved.

50-31-236. Labeling requirements for bottled water. (1) A person may not sell, deliver, offer for sale, hold for sale, or give away bottled water unless it conforms to and is labeled in compliance with the following standards:

(a) bottled mineral water must be labeled "mineral water" or "natural mineral water";

(b) bottled water that contains naturally occurring carbon dioxide that emerges from the water and is bottled directly with its entrapped gas or that has been mechanically separated from and subsequently reintroduced into the water at a level not higher than that naturally occurring in the water must be labeled "naturally carbonated water" or "naturally sparkling water". Bottled water that contains carbon dioxide from a source that is not naturally occurring may not be labeled with the word "naturally".

(c) bottled artesian water may be labeled "artesian well water", "natural artesian water", or "natural well water";

(d) bottled spring water may be labeled "spring water" or "natural spring water";

(e) bottled well water may be labeled "well water" or "natural well water";

(f) bottled purified water must be labeled "purified water" and state the method of preparation. All of the letters specifying the type of bottled water must be printed in the same type size, style, and color. However, bottled purified water produced by distillation may be labeled "distilled water".

(g) bottled demineralized water that is not purified water must be labeled "demineralized water" and state the method of preparation. All of the letters specifying the type of bottled water must be printed in the same type size, style, and color. However, bottled demineralized water produced by distillation may be labeled "distilled water".

(h) bottled drinking water must be labeled "drinking water";

(i) bottled fluoridated water must specify on the label whether the fluoride is naturally occurring or added;

(j) unless the water is in fact spring water, language containing the word "spring" or "springs" may not be used as a brand name on the label or in words describing the bottled water.

(2) A product meeting more than one definition may be labeled with any of the definitions with which it complies.

History: En. Sec. 2, Ch. 169, L. 1989.

50-31-237. Health claims for bottled water. Claims of medicinal or health-giving properties on labels or in advertisements for bottled water are prohibited.

History: En. Sec. 3, Ch. 169, L. 1989.

50-31-238. Misrepresentation of a company name. A bottler, distributor, or vendor of bottled water whose company name or trademark contains the words "spring", "springs", "well", "artesian well", "mineral", or any derivative of those words shall label each bottle with the company's brand name or trademark and, if the source of the bottled water is different from the source stated in the company name, the source of the water. This information must be in typeface at least equal to the size of the typeface of the company name or trademark.

History: En. Sec. 4, Ch. 169, L. 1989.

Part 3

Drugs and Devices

Part Cross-References

Dangerous drugs, Title 45, ch. 9.

Drug Paraphernalia Act, Title 45, ch. 10, part 1.

Controlled substances, Title 50, ch. 32.

50-31-301. Definitions. As used in this part, the following definitions apply:

(1) "Established name", with respect to a drug or ingredient thereof, means:

(a) the applicable official name designated pursuant to section 508 of the federal act;

(b) if there is no such name and such drug or such ingredient is an article recognized in an official compendium, then the official title thereof in such compendium; or provided that, where subsection (1)(b) of this section applies to an article recognized in the United States Pharmacopoeia, the official title used in the United States Pharmacopoeia shall apply;

(c) if neither subsection (1)(a) nor (1)(b) of this section applies, then the common or usual name, if any, of such drug or of such ingredient.

(2) "Antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by a microorganism and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).

(3) "Manufacturer" means a person who mixed the final ingredients and prepared the final drug product.

(4) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, marks or monograms unique to the manufacturer or distributor of the drug, or both.

(5) "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label whether or not he is the manufacturer of the drug.

(6) "Solid dosage form" means capsules or tablets intended for oral use.

(7) "Legend drug" means any drug defined by section 503(b) of the federal Food, Drug and Cosmetic Act, as amended on January 15, 1980, under which its label is required to bear the statement: "Caution: Federal law prohibits dispensing without prescription."

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part); amd. Sec. 1, Ch. 403, L. 1979; amd. Sec. 1, Ch. 95, L. 1981; amd. Sec. 1, Ch. 239, L. 1983.

50-31-302. Antiseptics considered to be germicides. The representation of a drug in its labeling or advertisement as an antiseptic is considered to be a representation that it is a germicide except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or other use which involves prolonged contact with the body.

History: En. Sec. 2, Ch. 307, L. 1967; amd. Sec. 1, Ch. 171, L. 1971; amd. Sec. 1, Ch. 114, L. 1974; amd. Sec. 3, Ch. 349, L. 1974; R.C.M. 1947, 27-702(n).

50-31-303. Certain drug advertisements considered false. (1) For the purpose of this chapter, the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or a sexually transmitted disease shall also be deemed to be false, except that no advertisement not in violation of 50-31-107(1) shall be deemed to be false under this section if it is disseminated only to members of the medical, dental, or veterinary professions or appears only in the scientific periodicals of these professions or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices.

(2) Whenever the department determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the department shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the department may deem necessary in the interests of public health.

(3) This section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

History: En. Sec. 20, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-720(b); amd. Sec. 10, Ch. 37, L. 1979; amd. Sec. 17, Ch. 440, L. 1989.

Cross-References

Advertising drug paraphernalia prohibited, 45-10-106.

50-31-304. Certain drugs and devices exempt from labeling requirements of chapter. Drugs and devices which are, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at establishments other than those where originally processed or packed shall be exempt from any labeling or packaging requirements of this chapter, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked, or otherwise held in compliance with regulations issued by the department or under the federal act.

History: En. Sec. 15, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-305. When drug or device adulterated. A drug or device shall be deemed to be adulterated if it:

(1) consists in whole or in part of any filthy, putrid, or decomposed substance;

(2) has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth or rendered injurious to health;

(3) is a drug and the methods used in or the facilities or controls used for its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this chapter as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess;

(4) is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health;

(5) is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act or it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of the federal act;

(6) purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from or its quality or purity falls below the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or, in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subsection because it differs from the standard of strength, quality, or purity therefor set forth in such compendium if its difference in strength, quality, or purity from such standard is plainly stated on its label.

(7) is not subject to the provisions of subsection (6) of this section and its strength differs from or its purity or quality falls below that which it purports or is represented to possess; or

(8) is a drug and any substance has been:

(a) mixed or packed therewith so as to reduce its quality or strength; or

(b) substituted wholly or in part therefor.

History: En. Sec. 14, Ch. 307, L. 1967; R.C.M. 1947, 27-714; amd. Sec. 11, Ch. 37, L. 1979.

Cross-References

Use of additives, 50-31-109.

50-31-306. When drug or device misbranded. (1) A drug or device shall be deemed to be misbranded:

(a) if its labeling is false or misleading in any particular;

(b) if in package form unless it bears a label containing:

(i) the name and place of business of the manufacturer, packer, or distributor, except that a prescription drug must contain the name and place of business of the manufacturer as well as the packer or distributor; and

(ii) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variation shall be permitted and exemptions as to small packages shall be allowed in accordance with regulations prescribed by the department or issued under the federal act;

(c) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(d) if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, sulphonmethane, or any chemical derivative of such substance which, after investigation, has been found to be and designated as habit-forming by regulations issued by the department under this chapter or by regulations issued pursuant to section 502(d) of the federal act, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning—May be habit-forming";

(e) if it is a drug, unless its label bears to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula):

(i) the established name (as defined in 50-31-301(1)) of the drug, if such there be; and

(ii) in case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances contained therein; provided that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subsection (1)(e)(ii), shall apply only to prescription drugs; provided further that, to the extent that compliance with the requirements of this subsection (1)(e)(ii) is impracticable, exemptions shall be allowed under regulations promulgated by the department or under the federal act;

(f) unless its labeling bears:

(i) adequate directions for use; provided that, where any requirement of this subsection (1)(f)(i), as applied to any drug or device, is not necessary for the protection of the public health, the department shall promulgate regulations exempting such drug or device from such requirements; provided further that articles exempted under regulations issued under section 502(f) of the federal act may also be exempt; and

(ii) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form as are necessary for the protection of users;

(g) if it purports to be a drug, the name of which is recognized in an official compendium unless it is packaged and labeled as prescribed therein, provided that the method of packing may be modified with the consent of the department or if consent is obtained under the federal act. In the event of inconsistency between the requirements of this subsection and those of subsection (e) as to the name by which the drug or its ingredients shall be designated, the requirements of subsection (e) shall prevail.

(h) if it has been found by the department or under the federal act to be a drug liable to deterioration, unless it is packaged in such form and manner and its label bears a statement of such precautions as the regulations issued by the department or under the federal act require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the department shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) if it is a drug and its container is so made, formed, or filled as to be misleading;

(j) if it is an imitation of another drug;

(k) if it is offered for sale under the name of another drug;

(l) if it is dangerous to health when used in the dosage or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof;

(m) if it is, purports to be, or is represented as a drug composed wholly or partly of insulin, unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug;

(n) if it is, purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, any other antibiotic drug, or any derivative thereof unless:

(i) it is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act; and

(ii) such certificate or release is in effect with respect to such drug; provided that subsection (1)(n) shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act;

(o) if it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of 50-31-108 or of the federal act;

(p) in the case of any prescription drug distributed or offered for sale in this state, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of:

(i) the established name, as defined in 50-31-301(1);

(ii) the formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act; and

(iii) such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act; or

(q) if a trademark, trade name, or other identifying mark, imprint, or device or another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.

(2) A drug which is subject to 50-31-307 shall be deemed to be misbranded if, at any time prior to dispensing, its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription", or "Caution: State Law Prohibits Dispensing Without Prescription". A drug to which 50-31-307 does not apply shall be deemed to be misbranded if, at any time prior to dispensing, its label bears the caution statement quoted in the preceding sentence.

History: En. Secs. 15, 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-715(part), 27-716(d); amd. Sec. 12, Ch. 37, L. 1979; amd. Sec. 2, Ch. 403, L. 1979.

Cross-References

Regulation of sale of drugs and medicines by Board of Pharmacy, 37-7-201.

50-31-307. Dispensing of prescription drugs. (1) A drug intended for use by man that falls in one of the categories in subsection (2) may be dispensed only:

(a) upon a written prescription of a practitioner licensed by law to administer the drug;

(b) upon an oral prescription of the practitioner that is reduced promptly to writing and filed by the pharmacist; or

(c) by refilling any written or oral prescription if the refilling is authorized by the prescriber either in the original prescription or by oral order that is reduced promptly to writing and filed by the pharmacist.

(2) A drug must be dispensed as provided in subsection (1) if the drug:

(a) is a habit-forming drug to which 50-31-306(1)(d) applies;

(b) because of its toxicity or other potentiality for harmful effect, the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer the drug; or

(c) is limited by an approved application under section 505 of the federal act or 50-31-311 to use under the professional supervision of a practitioner licensed by law to administer the drug.

(3) If the drug is a factory prepackaged oral contraceptive, it may be dispensed as provided in subsection (1) or by a registered nurse employed by a family planning clinic under contract with the department of health and environmental sciences pursuant to a physician's written protocol specifying the circumstances under which dispensing is appropriate and pursuant to the board of pharmacy's rules concerning labeling, storage, and recordkeeping of drugs.

(4) The act of dispensing a drug contrary to the provisions of this section is considered an act that results in a drug being misbranded while held for sale.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(a); amd. Sec. 3, Ch. 472, L. 1989.

Cross-References

Regulation of sale of drugs and medicines by Board of Pharmacy, 37-7-201.

Distribution or sale of DMSO for human use, 50-42-102.

50-31-308. Prescription drugs exempt from certain provisions of chapter. Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of 50-31-306, except subsections (1)(a), (1)(j), (1)(k), (1)(m), (1)(n), and the packaging requirements of subsections (1)(g) and (1)(h), if the drug bears a label containing the name and address of the dispenser, the serial number and date of the prescription or of its filling, the name of the prescriber, and if stated in the prescription, the name of the patient and the directions for use and cautionary statements, if any, contained in such prescription. This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or to a drug dispensed in violation of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(b).

50-31-309. Removal of drugs from prescription requirement. The department may by regulation remove drugs subject to 50-31-306(1)(d) and 50-31-311 from the requirements of 50-31-307 when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder may also, by regulations issued by the department, be removed from the requirements of 50-31-307.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(c).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-31-310. Narcotic and marijuana laws not affected. Nothing in 50-31-306(2), 50-31-307, 50-31-308, or 50-31-309 shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classifications of narcotic drugs or marijuana, as defined in the applicable federal and state laws relating to narcotic drugs and marijuana.

History: En. Sec. 16, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-716(e).

Cross-References

Offenses involving dangerous drugs, Title 45, ch. 9.

50-31-311. New drug application required. (1) Except as provided in Title 50, chapter 42, no person may sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(a) an application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the federal act; or

(b) when not subject to the federal act, such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof and, prior to selling or offering for sale such drug, there has been filed with the department an application setting forth:

(i) full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;

(ii) a full list of the articles used as components of such drug;

(iii) a full statement of the composition of such drug;

(iv) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;

(v) such samples of such drug and of the articles used as components thereof as the department may require; and

(vi) specimens of the labeling proposed to be used for such drug.

(2) An application provided for in subsection (1)(b) shall become effective on the 180th day after the filing thereof, except that, if the department finds, after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe or not effective for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, it shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(3) An order refusing to permit an application under this section to become effective may be revoked by the department.

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(a) thru (c); amd. Sec. 1, Ch. 333, L. 1981.

50-31-312. Exemptions from new drug application requirement. (1) Section 50-31-311 shall not apply to:

(a) a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs, provided the drug is plainly labeled in compliance with regulations issued by the department or pursuant to section 505(i) or 507(d) of the federal act;

(b) a drug sold in this state at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act;

(c) any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1958 ed. Title 42, chapter 6A, sec. 262); or

(d) any drug which is subject to 50-31-306(1)(n).

(2) The provisions of 50-31-103(30) shall not apply to any drug, when such drug is intended solely for use under conditions prescribed, recommended, or suggested in labeling with respect to such drug, which on October 9, 1962, or on the date immediately preceding July 1, 1967:

(a) was commercially sold or used in this state or in the United States;

(b) was not a new drug as defined by 50-31-103(30) as then in force; and

(c) was not covered by an effective application under 50-31-311 or under section 505 of the federal act.

History: En. Sec. 17, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-717(d), (e); amd. Sec. 2, Ch. 456, L. 1979; amd. Sec. 7, Ch. 169, L. 1989.

50-31-313. Code imprint required on legend drugs. No legend drug in solid dosage form may be manufactured or distributed in this state unless it is clearly marked or imprinted with a code imprint identifying the drug and the manufacturer or distributor of the drug.

History: En. Sec. 2, Ch. 95, L. 1981.

Cross-References

Penalty for violation, 50-31-506.

50-31-314. Exemptions from code imprint requirement. The board of pharmacy may grant exemptions from the requirements of 50-31-313 and 50-31-315 upon a showing by a drug manufacturer or distributor that size, physical characteristics, or other compelling reasons render application of a code imprint on a legend drug subject to the provisions of 50-31-313 impractical or impossible. Any exemption granted must be included in the list required by 50-31-315 and must describe the physical characteristics and type of drug covered by the exemption.

History: En. Sec. 3, Ch. 95, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

50-31-315. List of code imprints to be provided. Upon request of the board of pharmacy, all manufacturers and distributors of legend drugs in solid dosage form who produce or distribute legend drugs in Montana must provide and keep current a list of those drugs, which list identifies the manufacturer and the specific type of each drug by code imprint.

History: En. Sec. 4, Ch. 95, L. 1981; amd. Sec. 1, Ch. 247, L. 1983.

Penalty for violation, 50-31-506.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

Part 4

Cosmetics

Part Cross-References

Licensing of cosmetologists, Title 37, ch. 31.

50-31-401. When cosmetic adulterated. A cosmetic shall be deemed to be adulterated if:

(1) it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the

labeling or advertisement thereof or under such conditions of use as are customary or usual;

(2) it consists in whole or in part of any filthy, putrid, or decomposed substance;

(3) it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth or rendered injurious to health;

(4) its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(5) it is not a hair dye and it is or it bears or contains a color additive which is unsafe within the meaning of the federal act.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

Cross-References

Use of additives, 50-31-109.

50-31-402. When cosmetic misbranded. A cosmetic shall be deemed to be misbranded if:

(1) its labeling is false or misleading in any particular;

(2) in package form unless it bears a label containing:

(a) the name and place of business of the manufacturer, packer, or distributor; and

(b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; provided that reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the department;

(3) any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) its container is so made, formed, or filled as to be misleading;

(5) it is a color additive, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive prescribed under the provisions of the federal act.

History: En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-719(part).

50-31-403. Exceptions for hair dyes. (1) Section 50-31-401 shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals, and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness", and the labeling of which bears adequate directions for such preliminary testing.

(2) Subsection 50-31-402(5) shall not apply to packages of color additives which, with respect to their use for cosmetics, are marketed and intended for use only in or on hair dyes (as defined in 50-31-404).

History: (1)En. Sec. 18, Ch. 307, L. 1967; Sec. 27-718, R.C.M. 1947; (2)En. Sec. 19, Ch. 307, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; Sec. 27-719, R.C.M. 1947; R.C.M. 1947, 27-718(part), 27-719(part).

50-31-404. Term hair dye not to include eyelash or eyebrow dyes. For the purpose of 50-31-401(5) and 50-31-403, the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

History: En. Sec. 18, Ch. 307, L. 1967; R.C.M. 1947, 27-718(part).

Part 5

Prohibited Acts, Penalties, and Remedies

50-31-501. Prohibited acts. The following acts and the causing thereof within the state of Montana are hereby prohibited:

(1) the manufacture, sale or delivery, holding, or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) the adulteration or misbranding of any food, drug, device, or cosmetic;

(3) the receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise;

(4) the sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 50-31-205 or 50-31-311;

(5) the dissemination of any false advertisement;

(6) the refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 50-31-106;

(7) the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food, drug, device, or cosmetic;

(8) the removal or disposal of a detained or embargoed article in violation of 50-31-509;

(9) the alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, drug, device, or cosmetic if such act is done while such article is held for sale and results in such article being adulterated or misbranded;

(10) forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this chapter or of the federal act;

(11) the using on the labeling of any drug or in any advertisement relating to such drug of any representation or suggestion that an application with respect to such drug is effective under 50-31-311 or that such drug complies with the provisions of 50-31-311;

(12) in the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal or to transmit to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold or such other printed matter as is approved under the federal act. Nothing in this subsection shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this chapter.

(13) placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing;

(14) selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody, with intent to sell, dispense, or dispose of, any drug, device, or any container thereof with knowledge that the trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (13) hereof;

(15) making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name, other identifying mark, or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof;

(16) the using by any person to his own advantage or revealing, other than to the state board, officers or employees of the department, or the courts when relevant in any judicial proceeding under this chapter, any information acquired under authority of this chapter concerning any method or process which as a trade secret is entitled to protection;

(17) the distribution in commerce of a consumer commodity, as defined in this chapter, if such commodity is contained in a package or if there is affixed to that commodity a label which does not conform to the provisions of this chapter and of regulations promulgated under authority of this chapter. This prohibition does not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(a) are engaged in the packaging or labeling of such commodities; or

(b) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(18) the labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this chapter.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(1) thru (16).

Cross-References

Immunity of persons donating food for free distribution, 27-1-716.

Deceptive business practices, 45-6-318.

Alteration of dangerous drug labels unlawful — penalty, 45-9-105, 45-9-106.

Penalties, 50-31-506.

50-31-502. Unlawful labeling of products resembling honey. It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey if it is not honey.

History: En. Sec. 3, Ch. 307, L. 1967; amd. Sec. 2, Ch. 171, L. 1971; amd. Sec. 2, Ch. 114, L. 1974; amd. Sec. 9, Ch. 403, L. 1977; R.C.M. 1947, 27-703(part).

Cross-References

Labeling requirements, 50-31-204.

Penalties, 50-31-506.

50-31-503. Prosecution of minor violations not required. Nothing in this chapter shall be construed as requiring the department to report for the institution of proceedings under this chapter minor violations of this chapter whenever the department believes that the public interest will be adequately served in the circumstances by a suitable written notice of warning.

History: En. Sec. 8, Ch. 307, L. 1967; R.C.M. 1947, 27-708.

50-31-504. Notice and hearing required prior to prosecution. Before a violation of this chapter is reported to a state or county attorney for the institution of a criminal proceeding, the person against whom the proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing and either in person or by attorney, with regard to the contemplated proceeding.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-31-505. Duty of state or county attorneys to prosecute. Each state attorney or county attorney to whom the department reports a violation of this chapter shall cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law.

History: En. Sec. 7, Ch. 307, L. 1967; amd. Sec. 2, Ch. 187, L. 1977; R.C.M. 1947, 27-707(part).

Cross-References

Duties of Attorney General, 2-15-501.

Duty of County Attorney in state matters, 7-4-2716.

50-31-506. Penalties. (1) Any person who violates any of the provisions of 50-31-204, 50-31-208, 50-31-313, 50-31-315, 50-31-501, or 50-31-502 is guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than 3 months, a fine of not more than $250, or both such imprisonment and fine.

(2) If the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than 6 months, a fine of not more than $500, or both such imprisonment and fine.

History: En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(a); amd. Sec. 3, Ch. 456, L. 1979; amd. Sec. 5, Ch. 95, L. 1981.

Cross-References

Immunity of persons donating food for free distribution, 27-1-716.

Unauthorized sale or distribution of DMSO for human use, 50-42-102.

50-31-507. Exceptions to penalties. (1) No person shall be subject to the penalties of 50-31-506 for having violated subsection (1) or (3) of 50-31-501 if he establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the article to the effect that such article is not adulterated or misbranded within the meaning of this chapter, designating this chapter.

(2) No publisher, radiobroadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under 50-31-506 by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the department, to furnish the department the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency residing in the state of Montana who causes him to disseminate such advertisement.

History: En. Sec. 5, Ch. 307, L. 1967; R.C.M. 1947, 27-705(b), (c).

Cross-References

Freedom of speech and expression, Art. II, sec. 7, Mont. Const.

50-31-508. Injunction to restrain prohibited acts. In addition to the remedies hereinafter provided, the department is hereby authorized to apply to district court for and such court shall have jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating any provision of 50-31-204, 50-31-208, 50-31-501, or 50-31-502, irrespective of whether or not there exists an adequate remedy at law.

History: En. Sec. 4, Ch. 307, L. 1967; R.C.M. 1947, 27-704; amd. Sec. 4, Ch. 456, L. 1979.

Cross-References

Injunctions, Title 27, ch. 19.

50-31-509. Detainer of adulterated or misbranded articles. (1) If an agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this chapter, he shall affix to the article a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the article by sale or otherwise until permission for removal or disposal is given by the agent or the court. It is unlawful for a person to remove or dispose of a detained or embargoed article by sale or otherwise without permission. The owner of an embargoed article or another authorized person and the department may enter into a disposal agreement providing for the disposal, reconditioning, or other disposition of the embargoed article. If such an agreement is executed or if the embargo is otherwise removed by the department or the court, neither the department nor the state may be held liable for damages caused by such embargo provided that probable cause existed for its imposition.

(2) If an article detained or embargoed under subsection (1) is found by the agent to be adulterated or misbranded and a disposal agreement is not executed as provided in subsection (1), the agent shall petition the justice of peace, city judge, or district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of the article. If the agent finds that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the agent and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the article or his agent.

(4) If the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after the costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that the article will be so labeled or processed, has been executed, may by order direct that the article be delivered to the claimant thereof for the labeling or processing under the supervision of an agent of the department. The expense of the supervision shall be paid by claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this chapter and that the expenses of the supervision have been paid.

History: En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(1) thru (3); amd. Sec. 1, Ch. 158, L. 1981.

Cross-References

District Court jurisdiction, Title 3, ch. 5, part 3.

Justices' Courts jurisdiction, Title 3, ch. 10, part 3.

City Court jurisdiction, Title 3, ch. 11, part 1.

50-31-510. Condemnation of perishables. Whenever the department or any of its authorized agents find in any room, building, vehicle of transportation, or other structure any meat, seafood, poultry, vegetable, fruit, or other perishable article which is unsound or contains any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the article being hereby declared to be a nuisance, the department or its authorized agent shall immediately condemn or destroy the article or in any other manner render the article unsalable as human food.

History: En. Sec. 6, Ch. 307, L. 1967; amd. Sec. 1, Ch. 187, L. 1977; R.C.M. 1947, 27-706(4).

CHAPTER 32

CONTROLLED SUBSTANCES

Part 1 — General Provisions

50-32-101. Definitions.
50-32-102. Uniformity of construction.
50-32-103. Board to administer chapter.
50-32-104. Board's authority limited.
50-32-105. Board to conduct educational programs.
50-32-106. Board to encourage research.

Part 2 — Scheduling of Dangerous Drugs

50-32-201. General criteria to be considered.
50-32-202. Designation of drug as dangerous drug.
50-32-203. Effect of rescheduling under federal law.
50-32-204. Immediate precursors.
50-32-205. Nonprescription drugs not to be scheduled.
50-32-206. Use of names of scheduled drugs.
50-32-207. Order forms for drugs in Schedules I and II.
50-32-208. Prescription and medical requirements for scheduled drugs — penalty.
50-32-209. Annual republication of schedules.
50-32-210 through 50-32-220 reserved.
50-32-221. Criteria for placement of drug in Schedule I.
50-32-222. Specific dangerous drugs included in Schedule I.
50-32-223. Criteria for placement of drug in Schedule II.
50-32-224. Specific dangerous drugs included in Schedule II.
50-32-225. Criteria for placement of drug in Schedule III.
50-32-226. Specific dangerous drugs included in Schedule III.
50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III.
50-32-228. Criteria for placement of drug in Schedule IV.
50-32-229. Specific dangerous drugs included in Schedule IV.
50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV.
50-32-231. Criteria for placement of drug in Schedule V.
50-32-232. Specific dangerous drugs included in Schedule V.

Part 3 — Annual Registration

50-32-301. Annual registration required for manufacturer, distributor, or dispenser.
50-32-302. Exceptions to registration requirement.
50-32-303. Waiver of registration requirement for practitioners licensed by federal government.
50-32-304. Waiver of registration requirement when in public interest.
50-32-305. Separate registration required.
50-32-306. Criteria for registration of manufacturers and distributors.
50-32-307. Manufacture and distribution limited by registration.
50-32-308. Criteria for registration of practitioners.
50-32-309. Registrants to maintain records and inventories.
50-32-310. Inspections authorized.
50-32-311. Revocation or suspension of registration.
50-32-312. Procedure for denial, suspension, revocation of, or refusal to renew registration.
50-32-313. Practitioner's failure to register a misdemeanor.

Part 4 — Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance.
50-32-402. Reports required — exceptions.

50-32-403. Common reporting form.
50-32-404. Loss, theft, or other discrepancy to be reported.
50-32-405. Violation — penalties.

Chapter Cross-References

Dangerous Drug Tax Act, Title 15, ch. 25.
Dangerous drugs, Title 45, ch. 9.
Drug Paraphernalia Act, Title 45, ch. 10, part 1.

Part 1

General Provisions

50-32-101. Definitions. As used in this chapter, the following definitions apply:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent); or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacy provided for in 2-15-1843.

(4) "Bureau" means the drug enforcement administration, United States department of justice, or its successor agency.

(5) "Counterfeit substance" means a dangerous drug which or the container or labeling of which without authorization bears the trademark, trade name, or other identifying mark, imprint, number, or device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(6) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V hereinafter set forth.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of commerce provided for in Title 2, chapter 15, part 18.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) “Distribute” means to deliver other than by administering or dispensing a dangerous drug.

(12) “Distributor” means a person who distributes.

(13) (a) “Drug” means:

(i) a substance recognized as a drug in the official United States Pharmacopoeia/National Formulary or any supplement to it;

(ii) a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(iii) a substance (other than food) intended to affect the structure or any function of the body of man or animals; and

(iv) a substance intended for use as a component of any article specified in (a)(i), (a)(ii), or (a)(iii) of this subsection.

(b) “Drug” does not include a device or its components, parts, or accessories.

(14) “Hashish”, as distinguished from marijuana, means the mechanically processed or extracted plant material that contains tetrahydrocannabinol (THC) and is composed of resin from the cannabis plant.

(15) “Immediate precursor” means a substance which the board finds and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(16) (a) “Manufacture” means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container.

(b) “Manufacture” does not include the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(i) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice; or

(ii) by a practitioner or his authorized agent under his supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(17) “Marijuana (marihuana)” means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(18) “Narcotic drug” means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in (18)(a) of this section, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; or

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(19) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under 50-32-202, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(20) "Opium poppy" means the plant of the species papaver somniferum 1., except its seeds.

(21) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(22) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(23) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; and

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(24) The term "prescription" is given the meaning it has in 37-7-101.

(25) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this chapter.

(26) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(27) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

History: En. Sec. 1, Ch. 412, L. 1973; amd. Sec. 1, Ch. 350, L. 1974; amd. Sec. 1, Ch. 382, L. 1975; amd. Sec. 6, Ch. 187, L. 1977; R.C.M. 1947, 54-301; amd. Sec. 3, Ch. 274, L. 1981; amd. Sec. 12, Ch. 379, L. 1981; amd. Sec. 1, Ch. 155, L. 1983; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Board of Pharmacy, Title 37, ch. 7, part 2.

50-32-102. Uniformity of construction. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those other states which enact it.

History: En. Sec. 28, Ch. 412, L. 1973; R.C.M. 1947, 54-326.

50-32-103. Board to administer chapter. (1) The board shall administer this chapter and may add drugs to or delete or reschedule all drugs enumerated in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, or 50-32-232 pursuant to the rulemaking procedures of the Montana Administrative Procedure Act.

(2) The board shall promulgate rules for its administration which are not inconsistent with this chapter and specifically shall levy and the department shall collect reasonable registration fees relating to the registration and control of the manufacture, distribution, and dispensing of dangerous drugs within the state. The maximum fee for any registration shall not exceed $100 per year.

History: En. Secs. 2, 15, Ch. 412, L. 1973; amd. Secs. 2, 5, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part), 54-315.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Board of Pharmacy, Title 37, ch. 7, part 2.

50-32-104. Board's authority limited. Authority to control under 50-32-103 does not extend to distilled spirits, liquor, wine, malt beverages, beer, porter, ale, stout, or tobacco.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(5).

Cross-References

Control of liquor, beer, and wine, Title 16, ch. 3.

50-32-105. Board to conduct educational programs. (1) The board shall carry out educational programs designed to prevent and deter misuse and abuse of dangerous drugs.

(2) In connection with these programs, it may:

(a) promote better recognition of the problems of misuse and abuse of dangerous drugs within the regulated industry and among interested groups and organizations;

(b) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of dangerous drugs;

(c) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(d) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of dangerous drugs;

(e) disseminate the results of research on misuse and abuse of dangerous drugs to promote a better public understanding of what problems exist and what can be done to combat them; and

(f) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of dangerous drugs.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(1).

Cross-References

Teachers required to complete course in drug and alcohol abuse, 20-25-603.

50-32-106. Board to encourage research. (1) The board shall encourage research on misuse and abuse of dangerous drugs.

(2) In connection with the research and in furtherance of the enforcement of this chapter, it may:

(a) establish methods to assess accurately the effects of dangerous drugs and identify and characterize those with potential for abuse;

(b) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment, and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of dangerous drugs and the social effects thereof; and

(iii) improve methods for preventing, predicting, understanding, and dealing with the misuse and abuse of dangerous drugs; and

(c) request the department to enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of dangerous drugs.

(3) The board may authorize persons engaged in research on the use and effects of dangerous drugs to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(4) The board may authorize the possession and distribution of dangerous drugs by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of dangerous drugs to the extent of the authorization.

History: En. Sec. 23, Ch. 412, L. 1973; amd. Sec. 11, Ch. 350, L. 1974; R.C.M. 1947, 54-323(2) thru (4).

Part 2

Scheduling of Dangerous Drugs

Part Cross-References

Municipal powers regarding sale and use of opium and opium products, 7-31-4102.

Regulation of the dispensing of drugs by practitioners, Title 37, ch. 2, part 1.

Offenses involving dangerous drugs, Title 45, ch. 9.

50-32-201. General criteria to be considered. In making a determination regarding a drug, the board shall consider the following:

(1) the actual or relative potential for abuse;

(2) the scientific evidence of its pharmacological effect, if known;

(3) the state of current scientific knowledge regarding the drug;

(4) the history and current pattern of abuse;

(5) the scope, duration, and significance of abuse;

(6) the risk to the public health;

(7) the potential of the drug to produce psychic or physiological dependence liability; and

(8) whether the drug is an immediate precursor of a drug already controlled under this chapter.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(part).

50-32-202. Designation of drug as dangerous drug. After considering the factors enumerated in 50-32-201, the board shall make findings with respect thereto, and if it finds the drug has a potential for abuse, it shall designate such drug a dangerous drug in the manner set forth in the Montana Administrative Procedure Act.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(2).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-32-203. Effect of rescheduling under federal law. If any drug is designated, rescheduled, or deleted as a "controlled substance" under federal law and notice thereof is given to the board, the board shall similarly control the drug under this chapter after the expiration of 30 days from publication in the federal register of a final order designating a drug as a "controlled substance" or rescheduling or deleting a drug unless, within that 30-day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall cause the reasons for objection to be published and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the department shall publish the board's decision which shall be final unless altered thereafter by the board or by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this chapter by the board, control under this chapter is stayed until the board's decision is published.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(4).

50-32-204. Immediate precursors. If the board designates a drug as an immediate precursor, drugs which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(3).

Cross-References

Criminal possession of precursors to dangerous drugs, 45-9-107.

50-32-205. Nonprescription drugs not to be scheduled. The board shall exclude any nonnarcotic drug from a schedule if the drug may, under the Federal Food, Drug, and Cosmetic Act and 50-31-307(2)(b) of the Montana

Food, Drug, and Cosmetic Act, be lawfully sold over the counter without a prescription.

History: En. Sec. 2, Ch. 412, L. 1973; amd. Sec. 2, Ch. 350, L. 1974; R.C.M. 1947, 54-302(6); amd. Sec. 5, Ch. 472, L. 1989.

50-32-206. Use of names of scheduled drugs. The dangerous drugs listed or to be listed in the schedules in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 are included by whatever official, common, usual, chemical, or trade name designated.

History: En. Sec. 3, Ch. 412, L. 1973; amd. Sec. 3, Ch. 350, L. 1974; R.C.M. 1947, 54-303.

50-32-207. Order forms for drugs in Schedules I and II. Dangerous drugs in Schedules I and II shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section unless the board prescribes particular forms to be used.

History: En. Sec. 21, Ch. 412, L. 1973; R.C.M. 1947, 54-321.

50-32-208. Prescription and medical requirements for scheduled drugs — penalty. (1) No dangerous drug in Schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the board, Schedule II drugs may be dispensed upon a practitioner's oral prescription reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of 50-32-309. No prescription for a Schedule II drug may be refilled.

(3) A dangerous drug included in Schedule III or IV, which is a prescription drug as determined under the federal or Montana food, drug, and cosmetic acts, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than 6 months after the date thereof or be refilled more than five times unless renewed by the practitioner.

(4) A dangerous drug included in Schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) Any person who violates the provisions of this section is guilty of a misdemeanor and upon conviction may be fined not to exceed $1,000 or be imprisoned in county jail for a term not to exceed 1 year, or both fined and imprisoned.

History: En. Sec. 22, Ch. 412, L. 1973; amd. Sec. 10, Ch. 350, L. 1974; R.C.M. 1947, 54-322; amd. Sec. 13, Ch. 37, L. 1979; amd. Sec. 13, Ch. 379, L. 1981.

Cross-References

Regulation of sale of drugs and medicine by Board of Pharmacy, 32-7-201.

Regulation of prescriptions, Title 37, ch. 7, part 4.

50-32-209. Annual republication of schedules. The board shall revise and the department shall republish the schedules of dangerous drugs annually. For the purposes of this section, the mandate to republish may be satisfied by publication in the Administrative Rules of Montana pursuant to Title 2, chapter 4.

History: En. Sec. 14, Ch. 412, L. 1973; amd. Sec. 4, Ch. 350, L. 1974; R.C.M. 1947, 54-314; amd. Sec. 14, Ch. 379, L. 1981.

50-32-210 through 50-32-220 reserved.

50-32-221. Criteria for placement of drug in Schedule I. The board shall place a drug in Schedule I if it finds that the drug:

(1) has high potential for abuse; and

(2) has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

History: En. Sec. 4, Ch. 412, L. 1973; R.C.M. 1947, 54-304.

50-32-222. Specific dangerous drugs included in Schedule I. Schedule I consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Opiates. Unless specifically excepted or listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(a) acetyl-alpha-methylfentanyl;
(b) acetylmethadol;
(c) allylprodine;
(d) alphacetylmethadol;
(e) alphameprodine;
(f) alphamethadol;
(g) alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl)ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
(h) benzethidine;
(i) betacetylmethadol;
(j) beta-hydroxyfentanyl;
(k) beta-hydroxy-3-methylfentanyl;
(l) betameprodine;
(m) betamethadol;
(n) betaprodine;
(o) clonitazene;
(p) dextromoramide;
(q) diampromide;
(r) diethylthiambutene;
(s) difenoxin;
(t) dimenoxadol;
(u) dimepheptanol;
(v) dimethylthiambutene;
(w) dioxaphetyl butyrate;
(x) dipipanone;
(y) ethylmethylthiambutene;
(z) etonitazene;
(aa) etoxeridine;
(bb) furethidine;
(cc) hydroxypethidine;
(dd) ketobemidone;
(ee) levomoramide;

(ff) levophenacylmorphan;
(gg) 3-methylfentanyl;
(hh) 3-methylthiofentanyl;
(ii) morpheridine;
(jj) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(kk) noracymethadol;
(ll) norlevorphanol;
(mm) normethadone;
(nn) norpipanone;
(oo) para-fluorofentanyl;
(pp) PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine);
(qq) phenadoxone;
(rr) phenampromide;
(ss) phenomorphan;
(tt) phenoperidine;
(uu) piritramide;
(vv) proheptazine;
(ww) properidine;
(xx) propiram;
(yy) racemoramide;
(zz) thiofentanyl;
(aaa) tilidine; and
(bbb) trimeperidine.

(2) Opium derivatives. Unless specifically excepted or listed in another schedule, any of the following opium derivatives, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) acetorphine;
(b) acetyldihydrocodeine;
(c) benzylmorphine;
(d) codeine methylbromide;
(e) codeine-n-oxide;
(f) cyprenorphine;
(g) desomorphine;
(h) dihydromorphine;
(i) drotebanol;
(j) etorphine;
(k) heroin;
(l) hydromorphinol;
(m) methyldesorphine;
(n) methyldihydromorphine;
(o) morphine methylbromide;
(p) morphine methylsulfonate;
(q) morphine-n-oxide;
(r) myrophine;
(s) nicocodeine;
(t) nicomorphine;
(u) normorphine;

(v) pholcodine; and
(w) thebacon.

(3) Hallucinogenic substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances or any of its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) 3,4-methylenedioxy amphetamine;
(b) 3,4-methylenedioxymethamphetamine (MDMA);
(c) 5-methoxy-3,4-methylenedioxy amphetamine;
(d) 3,4,5-trimethoxy amphetamine;
(e) bufotenine;
(f) doet (2,5-dimethoxy-4-ethalamphetamine);
(g) diethyltryptamine;
(h) dimethyltryptamine;
(i) 4-methyl-2,5-dimethoxy-amphetamine;
(j) ibogaine;
(k) lysergic acid diethylamide;
(l) marijuana;
(m) mescaline;
(n) parahexyl;
(o) peyote;
(p) PCE (N-ethyl-1-phenylcyclohexylamine);
(q) PHP 1-(1-phenylcyclohexyl)pyrrolidine (pcp analog);
(r) n-ethyl-3-piperidyl benzilate;
(s) n-methyl-3-piperidyl benzilate;
(t) psilocybin;
(u) psilocyn;
(v) tetrahydrocannabinols;
(w) 2,5-dimethoxyamphetamine;
(x) 4-bromo-2,5-dimethoxy-amphetamine;
(y) 4-methoxyamphetamine;
(z) ethylamine analog of phencyclidine;
(aa) pyrrolidine analog of phencyclidine; and
(bb) thiophene analog of phencyclidine.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) mecloqualone; and
(b) methaqualone.

(5) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) fenethylline; and
(b) n-ethylamphetamine.

(6) For purposes of subsection (3) only, the term "isomer" includes the optical, position, and geometric isomers.

(7) If prescription or administration is authorized by the Federal Food, Drug and Cosmetic Act, then any material, compound, mixture, or preparation containing tetrahydrocannabinols listed in subsection (3) shall automatically be rescheduled from Schedule I to Schedule II.

History: En. Sec. 5, Ch. 412, L. 1973; R.C.M. 1947, 54-305; amd. Sec. 1, Ch. 320, L. 1979; amd. Sec. 1, Ch. 141, L. 1983; amd. Sec. 1, Ch. 36, L. 1991.

Compiler's Comments

1991 Amendment: In (1) schedule of opiates inserted acetyl-alpha-methylfentanyl, beta-hydroxyfentanyl, beta-hydroxy-3-meth ylfentanyl, 3-methylfentanyl, 3-methylthiofentanyl, MPPP (1-methyl-4-phenyl-4-propionoxypiperidine), para-fluorofentanyl, PEPAP(1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine), and thiofentanyl and deleted sufentanil; in (3) schedule of hallucinogenic substances inserted 3,4-methylenedioxymethamphetamine (MDMA), doet (2,5-dimethoxy-4-ethalamphetamine), parahexyl, PCE (N-ethyl-1-phenylcyclohexylamine), and PHP 1-(1-phenylcyclohexyl)pyrrolidine (pcp analog); and in (4) schedule of depressants inserted methaqualone.

Cross-References

Dangerous Drug Tax Act, Title 15, ch. 25.

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-223. Criteria for placement of drug in Schedule II. The board shall place a drug in Schedule II if it finds that:

(1) the drug has high potential for abuse;

(2) the drug has currently accepted medical use in treatment in the United States or currently accepted medical use with severe restrictions; and

(3) the abuse of the drug may lead to severe psychic or physical dependence.

History: En. Sec. 6, Ch. 412, L. 1973; R.C.M. 1947, 54-306.

50-32-224. Specific dangerous drugs included in Schedule II. Schedule II consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or listed in another schedule, any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone and their respective salts, but including the following:

(i) raw opium;
(ii) opium extracts;
(iii) opium fluid extracts;
(iv) powdered opium;
(v) granulated opium;
(vi) tincture of opium;
(vii) codeine;

(viii) ethylmorphine;
(ix) etorphine hydrochloride;
(x) hydrocodone;
(xi) hydromorphone;
(xii) metopon;
(xiii) morphine;
(xiv) oxycodone;
(xv) oxymorphone; and
(xvi) thebaine;

(b) any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of the substances referred to in subsection (1)(a) of this section, except that these substances do not include the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw;

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof that is chemically equivalent or identical with any of these substances, except that these substances do not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and

(e) concentrate of poppy straw, the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy.

(2) Opiates. Unless specifically excepted or listed in another schedule, any of the following opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) alfentanil;
(b) alphaprodine;
(c) anileridine;
(d) bezitramide;
(e) dihydrocodeine;
(f) diphenoxylate;
(g) fentanyl;
(h) isomethadone;
(i) levomethorphan;
(j) levorphanol;
(k) metazocine;
(l) methadone;
(m) methadone-intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
(n) moramide-intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
(o) pethidine (meperidine);
(p) pethidine-intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
(q) pethidine-intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
(r) pethidine-intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;

(s) phenazocine;

(t) piminodine;

(u) racemethorphan;

(v) racemorphan;

(w) sufentanil; and

(x) bulk dextropropoxyphene (nondosage forms).

(3) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system:

(a) amphetamine, its salts, optical isomers, and salts of its optical isomers;

(b) phenmetrazine and its salts;

(c) methamphetamine, its salts, isomers, and salts of its isomers; and

(d) methylphenidate.

(4) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) amobarbital;

(b) pentobarbital;

(c) phencyclidine; and

(d) secobarbital.

(5) Immediate precursors. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances:

(a) immediate precursor to amphetamine and methamphetamine:

(i) phenylacetone;

(b) immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine; and

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

(6) Hallucinogenic substances:

(a) dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a federal food and drug administration-approved drug product; and

(b) nabilone.

History: En. Sec. 7, Ch. 412, L. 1973; R.C.M. 1947, 54-307; amd. Sec. 2, Ch. 141, L. 1983; amd. Sec. 2, Ch. 36, L. 1991.

Compiler's Comments

1991 Amendment: In (2) schedule of opiates inserted alfentanil and sufentanil; in (4) schedule of depressants deleted methaqualone; and inserted (6) schedule of hallucinogenic substances.

Cross-References

Dangerous Drug Tax Act, Title 15, ch. 25.

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-225. Criteria for placement of drug in Schedule III. The board shall place a drug in Schedule III if it finds that:

(1) the drug has a potential for abuse less than the drugs listed in Schedules I and II;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to moderate or low physical dependence or high psychological dependence.

History: En. Sec. 8, Ch. 412, L. 1973; R.C.M. 1947, 54-308.

50-32-226. Specific dangerous drugs included in Schedule III. Schedule III consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) benzphetamine;
(b) chlorphentermine;
(c) clortermine; and
(d) phendimetrazine.

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system:

(a) any substance that contains any quantity of a derivative of barbituric acid or any salt thereof;
(b) chlorhexadol;
(c) glutethimide;
(d) lysergic acid;
(e) lysergic acid amide;
(f) methyprylon;
(g) sulfondiethylmethane;
(h) sulfonethylmethane;
(i) sulfonmethane;
(j) tiletamine and zolazepam or any of their salts;
(k) any compound, mixture, or preparation containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs and one or more other active medicinal ingredients that are not listed in any schedule; and
(l) any suppository dosage form containing amobarbital, secobarbital, or pentobarbital or any salt of any of these drugs approved by the federal food and drug administration for marketing only as a suppository.

(3) Nalorphine.

(4) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(b) not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(c) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(d) not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(e) not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(f) not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(g) not more than 500 milligrams of opium per 100 milliliters or per 100 grams or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts; or

(h) not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(5) Anabolic steroids. Any material, compound, mixture, or preparation containing an anabolic steroid, including but not limited to the following:

(a) androisoxazole;
(b) androstendiol;
(c) bolandiol;
(d) bolasterone;
(e) boldenone;
(f) chlormethandienone;
(g) clostebol;
(h) dihydromesterone;
(i) ethylestrenol;
(j) fluoxymesterone;
(k) formyldienolone;
(l) 4-hydroxy-19-nortestosterone;
(m) mesterolone;
(n) methandriol;
(o) methandrostenolone;
(p) methenolone;
(q) 17-methyltestosterone;
(r) methyltrienolone;
(s) nandrolone;
(t) norbolethone;
(u) norethandrolone;
(v) normethandrolone;

(w) oxandrolone;
(x) oxymestrone;
(y) oxymetholone;
(z) quinbolone;
(aa) stanolone;
(bb) stanozolol;
(cc) stenbolone;
(dd) testosterone; or
(ee) trenbolone.

History: **En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(1) thru (4); amd. Sec. 3, Ch. 141, L. 1983; amd. Sec. 3, Ch. 36, L. 1991; amd. Sec. 4, Ch. 42, L. 1991.**

Compiler's Comments

1991 Amendments: Chapter 36 in (2) schedule of depressants inserted tiletamine and zolazepam or any of their salts.

Chapter 42 inserted (5) schedule of anabolic steroids.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-227. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule III. The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant drug listed in 50-32-226(1) and (2) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a stimulant or depressant effect on the central nervous system.

History: **En. Sec. 9, Ch. 412, L. 1973; R.C.M. 1947, 54-309(5).**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-228. Criteria for placement of drug in Schedule IV. The board shall place a drug in Schedule IV if it finds that:

(1) the drug has a low potential for abuse relative to drugs in Schedule III;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) abuse of the drug may lead to limited physical dependence or psychological dependence relative to the drugs in Schedule III.

History: **En. Sec. 10, Ch. 412, L. 1973; R.C.M. 1947, 54-310.**

50-32-229. Specific dangerous drugs included in Schedule IV. Schedule IV consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in the following limited quantities:

(a) not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit; and

(b) dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(2) Depressants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(a) alprazolam;
(b) barbital;
(c) bromazepam;
(d) camazepam;
(e) chloral betaine;
(f) chloral hydrate;
(g) chlordiazepoxide;
(h) clobazam;
(i) clonazepam;
(j) clorazepate;
(k) clotiazepam;
(l) cloxazolam;
(m) delorazepam;
(n) diazepam;
(o) estazolam;
(p) ethchlorvynol;
(q) ethinamate;
(r) ethyl loflazepate;
(s) fludiazepam;
(t) flunitrazepam;
(u) flurazepam;
(v) halazepam;
(w) haloxazolam;
(x) ketazolam;
(y) loprazolam;
(z) lorazepam;
(aa) lormetazepam;
(bb) mebutamate;
(cc) medazepam;
(dd) meprobamate;
(ee) methohexital;
(ff) methylphenobarbital (mephobarbital);
(gg) midazolam;
(hh) nimetazepam;
(ii) nitrazepam;
(jj) nordiazepam;
(kk) oxazepam;
(ll) oxazolam;
(mm) paraldehyde;

(nn) petrichloral;
(oo) phenobarbital;
(pp) pinazepam;
(qq) prazepam;
(rr) quazepam;
(ss) temazepam;
(tt) tetrazepam; and
(uu) triazolam.

(3) Fenfluramine. Any material, compound, mixture, or preparation that contains any quantity of the following substance, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible:

(a) fenfluramine.

(4) Stimulants. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(a) cathine;
(b) diethylpropion;
(c) fencamfamin;
(d) fenproporex;
(e) mazindol;
(f) mefenorex;
(g) pemoline, including organometallic complexes and chelates thereof;
(h) phentermine;
(i) pipradrol; and
(j) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(5) Other substances. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts:

(a) pentazocine.

History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(1), (2); amd. Sec. 14, Ch. 37, L. 1979; amd. Sec. 4, Ch. 141, L. 1983; amd. Sec. 4, Ch. 36, L. 1991.

Compiler's Comments

1991 Amendment: In (2) schedule of depressants inserted bromazepam, camazepam, clobazam, clotiazepam, cloxazolam, delorazepam, estazolam, ethyl loflazepate, fludiazepam, flunitrazepam, haloxazolam, ketazolam, loprazolam, lormetazepam, medazepam, midazolam, nimetazepam, nitrazepam, nordiazepam, oxazolam, pinazepam, quazepam, tetrazepam, and triazolam; and in (4) schedule of stimulants inserted cathine, fencamfamin, fenproporex, and mefenorex.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

50-32-230. Board authorized to exempt certain compounds, mixtures, or preparations from Schedule IV. The board may except by rule any compound, mixture, or preparation containing any depressant drug listed in 50-32-229 from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the drugs which have a depressant effect on the central nervous system.

History: En. Sec. 11, Ch. 412, L. 1973; R.C.M. 1947, 54-311(3).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-231. Criteria for placement of drug in Schedule V. The board shall place a drug in Schedule V if it finds that:

(1) the drug has low potential for abuse relative to the controlled drugs listed in Schedule IV;

(2) the drug has currently accepted medical use in treatment in the United States; and

(3) the drug has limited physical dependence or psychological dependence liability relative to the dangerous drugs listed in Schedule IV.

History: En. Sec. 12, Ch. 412, L. 1973; R.C.M. 1947, 54-312.

50-32-232. Specific dangerous drugs included in Schedule V. Schedule V consists of the drugs and other substances, by whatever official, common, usual, chemical, or brand name designated, listed in this section.

(1) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following narcotic drugs or its salts calculated as the free anhydrous base or alkaloid in limited quantities as set forth in subsections (1)(a) through (1)(f), which include one or more nonnarcotic, active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by narcotic drugs alone:

(a) not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(b) not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(c) not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(d) not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(e) not more than 100 milligrams of opium per 100 milliliters or per 100 grams; and

(f) not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Buprenorphine.

(3) Propylhexedrine.

(4) Pyrovalerone.

History: En. Sec. 13, Ch. 412, L. 1973; R.C.M. 1947, 54-313; amd. Sec. 15, Ch. 37, L. 1979; amd. Sec. 5, Ch. 141, L. 1983; amd. Sec. 5, Ch. 36, L. 1991.

Compiler's Comments

1991 Amendment: In (2) substituted "buprenorphine" for "loperamide"; in (3) inserted propylhexedrine; and in (4) inserted pyrovalerone.

Cross-References

Criminal sale of dangerous drugs, 45-9-101.

Criminal sale of imitation dangerous drugs, 45-9-112.

Part 3

Annual Registration

50-32-301. Annual registration required for manufacturer, distributor, or dispenser. (1) Every person who manufactures, distributes, or dispenses any dangerous drug within this state must obtain annually a registration issued by the department in accordance with board rules.

(2) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with dangerous drugs may possess, manufacture, distribute, dispense, or conduct research with those drugs to the extent authorized by their registration and in conformity with the other provisions of this chapter.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(1), (2); amd. Sec. 15, Ch. 379, L. 1981.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-302. Exceptions to registration requirement. The following persons need not register and may lawfully possess dangerous drugs under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any dangerous drug if he is acting in the usual course of his business or employment;

(2) a common or contract carrier or warehouseman or an employee thereof, whose possession of any dangerous drug is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any dangerous drug pursuant to a lawful order of a practitioner or in lawful possession of a Schedule V drug;

(4) officers and employees of the state or a political subdivision of the state, while acting in the course of their official duties.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(3).

50-32-303. Waiver of registration requirement for practitioners licensed by federal government. The board shall waive the requirement for registration of practitioners, other than pharmacies, who are registered or licensed by the federal government to dispense dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(4).

50-32-304. Waiver of registration requirement when in public interest. The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(5).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-32-305. Separate registration required. A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses dangerous drugs.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(6).

50-32-306. Criteria for registration of manufacturers and distributors. (1) The board shall register an applicant to manufacture or distribute dangerous drugs included in 50-32-222, 50-32-224, 50-32-226, 50-32-229, and 50-32-232 unless it determines that the issuance of that registration would be inconsistent with the public interest.

(2) In determining the public interest, the board shall consider the following factors:

(a) maintenance of effective controls against diversion of dangerous drugs into other than legitimate medical, scientific, or industrial channels;

(b) compliance with applicable state and local law;

(c) any convictions of the applicant under any federal and state laws relating to any dangerous drug;

(d) past experience in the manufacture or distribution of dangerous drugs and the existence in the applicant's establishment of effective controls against diversion;

(e) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(f) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense dangerous drugs as authorized by federal law; and

(g) any other factors relevant to and consistent with the public health and safety.

(3) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this chapter.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(1), (4).

50-32-307. Manufacture and distribution limited by registration. Registration under 50-32-306 does not entitle a registrant to manufacture and distribute dangerous drugs in Schedule I or II other than those specified in the registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(2).

50-32-308. Criteria for registration of practitioners. (1) Practitioners shall be registered to dispense any dangerous drugs or to conduct research with dangerous drugs in Schedules II through V if they are authorized to dispense or conduct research under the laws of this state. The board need not require separate registration for practitioners engaging in research with nonnarcotic dangerous drugs in Schedules II through V where the registrant is already registered under this chapter in another capacity.

(2) Practitioners registered under federal law to conduct research with Schedule I drugs may conduct research with Schedule I drugs within this state upon furnishing the board evidence of that federal registration.

History: En. Sec. 17, Ch. 412, L. 1973; amd. Sec. 7, Ch. 350, L. 1974; R.C.M. 1947, 54-317(3).

50-32-309. Registrants to maintain records and inventories. Persons registered to manufacture, distribute, or dispense dangerous drugs under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and with any additional rules the board issues.

History: En. Sec. 20, Ch. 412, L. 1973; R.C.M. 1947, 54-320.

Cross-References

Prescription requirements, 50-32-208.

50-32-310. Inspections authorized. The board may have the establishment of a registrant or applicant for registration inspected.

History: En. Sec. 16, Ch. 412, L. 1973; amd. Sec. 6, Ch. 350, L. 1974; amd. Sec. 1, Ch. 291, L. 1975; R.C.M. 1947, 54-316(7).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-32-311. Revocation or suspension of registration. (1) A registration under 50-32-301 to manufacture, distribute, or dispense a dangerous drug may be suspended or revoked by the board upon a finding that the registrant has:

(a) furnished false or fraudulent material information in any application filed under this chapter;

(b) been convicted of a felony under any state or federal law relating to any dangerous drug or controlled substance; or

(c) had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances.

(2) The board may limit revocation or suspension of a registration to the particular dangerous drug with respect to which grounds for revocation or suspension exist.

(3) If the board suspends or revokes a registration, all dangerous drugs owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of drugs under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable drugs and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all dangerous drugs may be forfeited to the state.

(4) The board shall promptly cause the bureau to be notified of all orders suspending or revoking registration and all forfeitures of dangerous drugs.

History: En. Sec. 18, Ch. 412, L. 1973; amd. Sec. 8, Ch. 350, L. 1974; R.C.M. 1947, 54-318.

50-32-312. Procedure for denial, suspension, revocation of, or refusal to renew registration. (1) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial of renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration do not abate the existing registration, which remains in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under 50-32-311 or whenever renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension continues in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

History: En. Sec. 19, Ch. 412, L. 1973; amd. Sec. 9, Ch. 350, L. 1974; amd. Sec. 7, Ch. 187, L. 1977; R.C.M. 1947, 54-319.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

Judicial review, Title 2, ch. 4, part 7.

50-32-313. Practitioner's failure to register a misdemeanor. Practitioners who fail or refuse to register as required by this chapter shall be guilty of a misdemeanor and upon conviction therefor may be fined not to exceed $1,000, imprisoned in the county jail not to exceed 1 year, or both.

History: En. Sec. 29, Ch. 412, L. 1973; R.C.M. 1947, 54-327.

Part 4

Transfer of Precursors to Controlled Substances

50-32-401. Report required for precursor to controlled substance. (1) A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to a person in this state must submit a report to the department of justice detailing all such transactions:

(a) phenyl-2-propanone;

(b) methylamine;

(c) d-lysergic acid;

(d) ergotamine tartrate;
(e) diethyl malonate;
(f) malonic acid;
(g) ethyl malonate;
(h) barbituric acid; and
(i) piperidine.

(2) The department of justice may adopt, amend, or repeal rules in accordance with the Montana Administrative Procedure Act that add or delete substances to the list of regulated substances detailed in subsection (1), if the substance is a precursor to a dangerous drug as defined in 50-32-101.

(3) This section does not apply to any of the following:

(a) a pharmacist or other authorized person who sells or furnishes the substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;

(b) a physician, dentist, podiatrist, or veterinarian who administers or furnishes the substance to his patients;

(c) a manufacturer or wholesaler licensed by the board of pharmacy who sells, transfers, or otherwise furnishes the substance to a licensed pharmacist, physician, dentist, podiatrist, or veterinarian;

(d) transfers of the substances listed in subsection (1) within any college or university to an employee or student of the college or university for the purpose of teaching or research authorized by the college or university.

History: En. Sec. 1, Ch. 227, L. 1979; amd. Sec. 1, Ch. 247, L. 1983.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-32-402. Reports required — exceptions. (1) Except as provided in subsection (2), a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance regulated pursuant to 50-32-401 to a person in this state must, within 72 hours, submit a report of the transaction to the department of justice.

(2) The department may authorize the submission of the reports on a monthly basis for repeated, regular transactions between the furnisher and the recipient involving the same substance, if the department determines:

(a) a pattern of regular supply of the substance exists as between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance and the recipient of the substance; and

(b) the recipient has established a record of use of the substance for lawful purposes.

History: En. Sec. 2, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

Duty to report prescriptions issued to drug addicts, 37-2-111.

50-32-403. Common reporting form. (1) The department of justice must provide a common reporting form for the report required under 50-32-401.

(2) The form must contain the following information:

(a) name of the substance;

(b) quantity of the substance sold, transferred, or furnished;

(c) the date the substance was sold, transferred, or furnished;

(d) the name and address of the person buying or receiving the substance; and

(e) the name and address of the manufacturer, wholesaler, or retailer.

History: En. Sec. 3, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-404. Loss, theft, or other discrepancy to be reported. (1) The theft or loss of a substance regulated in accordance with 50-32-401 must be reported to the department of justice within 3 days after the theft or loss is discovered.

(2) Any difference between the quantity received of any substance regulated as provided in 50-32-401 and the quantity shipped must be reported to the department of justice within 3 days of the discovery of the discrepancy.

(3) A report made pursuant to this section shall also include the name of the common carrier or person who transported the substance and the date of shipment.

History: En. Sec. 4, Ch. 227, L. 1979.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

50-32-405. Violation — penalties. (1) A person commits the offense of failure to report sale or transfer of a precursor to a controlled substance if he purposely or knowingly fails to report the sale, transfer, or other furnishing of a substance regulated by 50-32-401.

(2) A person convicted of failing to report the sale or transfer of a precursor to a controlled substance shall be fined not more than $10,000 or imprisoned in the state prison for not more than 10 years, or both.

History: En. Sec. 5, Ch. 227, L. 1979.

CHAPTER 33

BLOOD AND BLOOD PRODUCTS

Part 1 — General Provisions

50-33-101. Labeling of containers by blood banks required.
50-33-102. Furnishing of blood, blood products, and human tissue, organs, or bones declared service and not sale.
50-33-103. Immunity of physicians and hospitals.
50-33-104. Immunity of blood banks and tissue banks.

Part 1

General Provisions

50-33-101. Labeling of containers by blood banks required. Each container or package containing any whole blood, plasma, blood products, or blood derivatives sold by a blood bank shall have plainly stamped or printed thereon the fact that the product therein was tested as required in 50-33-104, giving the date of the test and such information as is necessary to designate the type of test made.

History: En. Sec. 3, Ch. 284, L. 1971; R.C.M. 1947, 69-2205.

50-33-102. Furnishing of blood, blood products, and human tissue, organs, or bones declared service and not sale. The furnishing of and the injecting, transfusing, transplanting, or transferring into the human body of whole blood, plasma, blood products, blood derivatives, human tissue, organs, or bones by a hospital, long-term care facility, or doctor of any such substances obtained from any source which said hospital, long-term care facility, or doctor is not directly or indirectly financially interested in or has any control over is hereby declared not to be a sale of such whole blood, plasma, blood products, blood derivatives, human tissue, organs, or bones for any purpose.

History: En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part); amd. Sec. 1, Ch. 401, L. 1987.

Cross-References

"Sale" as defined in Uniform Commercial Code, 30-2-106.

50-33-103. Immunity of physicians and hospitals. No physician, long-term care facility, or hospital may be held liable, in the absence of fault or negligence on the part of such a hospital, long-term care facility, or doctor, for injuries resulting from the furnishing or performing of such services.

History: En. Sec. 1, Ch. 284, L. 1971; amd. Sec. 1, Ch. 76, L. 1975; R.C.M. 1947, 69-2203(part).

Cross-References

Liability, Title 27, ch. 1, part 7.

Good Samaritan law, 27-1-714.

Validity of consent to medical treatment, Title 41, ch. 1, part 4.

50-33-104. Immunity of blood banks and tissue banks. No blood bank or tissue bank may be held liable in the absence of fault or negligence for injuries resulting from the injecting, transfusing, transplanting, or transferring of whole blood, plasma, blood products, blood derivatives, human tissue, organs, or bones supplied by any such blood bank or tissue bank to any hospital or physician if such blood products or tissue products have been tested by the latest testing procedures in accordance with recommendations of the American association of blood banks or the American association of tissue banks and by such test are not found to be dangerous to the health of the recipient of such blood products or tissue products.

History: En. Sec. 2, Ch. 284, L. 1971; R.C.M. 1947, 69-2204; amd. Sec. 2, Ch. 401, L. 1987.

CHAPTER 34

FLOUR AND BREAD

Part 1 — General Provisions

50-34-101. Definitions.
50-34-102. Department to adopt rules.
50-34-103. Rules to be published.
50-34-104. Inspections and taking of samples authorized.
50-34-105. Vitamin and mineral content requirements for flour.
50-34-106. Exceptions to vitamin and mineral requirements for flour.
50-34-107. Vitamin and mineral content requirements for bread.
50-34-108. Vitamin and mineral requirements to be uniform with federal standards.
50-34-109. Modification of vitamin and mineral requirements when ingredients scarce.
50-34-110. Penalty.

Part 1

General Provisions

Part Cross-References

Regulation by city authorities, 7-21-4202.

50-34-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Flour" means the foods commonly known in the milling and baking industries as:

(a) white flour, also known as wheat flour or plain flour;

(b) bromated flour;

(c) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excluding whole wheat flour and special flours not used for bread, roll, bun, or biscuit baking, such as specialty cake and pancake flours.

(2) "White bread" means any bread made with flour, whether baked in a pan or on a hearth or screen, and which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread.

(3) "Rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, parkerhouse rolls, and hard rolls, such as Vienna rolls, kaiser rolls, yeast-raised sweet rolls, or sweet buns made with fillings or coatings, such as cinnamon rolls or buns and butterfly rolls.

(4) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(5) "Person" means an individual, corporation, partnership, association, joint-stock company, trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

History: En. Sec. 1, Ch. 274, L. 1971; amd. Sec. 5, Ch. 349, L. 1974; R.C.M. 1947, 27-801.

50-34-102. Department to adopt rules. The department shall adopt rules and orders for the efficient enforcement of this chapter.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(1).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-34-103. Rules to be published. (1) Orders and rules adopted by the department under this chapter shall be published in the manner prescribed in subsection (2) of this section and, within the limits specified by this chapter, shall become effective on the date the department fixes.

(2) When under this chapter publication of any notice, order, or rule is required, the publication shall be made at least once in at least one daily newspaper of general circulation printed and published in this state.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(4), (5).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-34-104. Inspections and taking of samples authorized. For the purpose of this chapter, the department may take samples for analysis, conduct examinations and investigations, and enter at reasonable times a factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held or a vehicle being used for the transportation thereof and may inspect the place or vehicle and any flour, white bread, or rolls therein and all pertinent equipment, materials, containers, and labeling.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(6).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-34-105. Vitamin and mineral content requirements for flour. (1) It shall be unlawful for any person to manufacture, mix, compound, sell, or offer for sale, for human consumption in this state, flour unless the following vitamins and minerals are contained in each pound of such flour:

(a) not less than 2.0 milligrams and not more than 2.5 milligrams of thiamine;

(b) not less than 1.2 milligrams and not more than 1.5 milligrams of riboflavin;

(c) not less than 16.0 milligrams and not more than 20.0 milligrams of niacin or niacinamide;

(d) not less than 13.0 milligrams and not more than 16.5 milligrams of assimilable iron (Fe).

(2) Self-rising flour, in addition to the above ingredients, shall contain not less than 500 milligrams and not more than 1500 milligrams of assimilable calcium (Ca).

History: En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).

50-34-106. Exceptions to vitamin and mineral requirements for flour. (1) The terms of 50-34-105 shall not apply to flour sold to distributors, bakers, or other processors if the purchaser furnishes to the seller a certificate in such form as the department shall by regulation prescribe certifying that such flour will be:

(a) resold to a distributor, baker, or other processor;

(b) used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of this chapter; or

(c) used in the manufacture of products other than flour, white bread, or rolls.

(2) It shall be unlawful for any purchaser so furnishing a certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History: En. Sec. 2, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-802(part).

50-34-107. Vitamin and mineral content requirements for bread. It shall be unlawful for any person to manufacture, bake, sell, or offer for sale, for human consumption in this state, any white bread or rolls unless the following vitamins and minerals are contained in each pound of such bread or rolls:

(1) not less than 1.1 milligrams and not more than 1.8 milligrams of thiamine;

(2) not less than 0.7 milligrams and not more than 1.6 milligrams of riboflavin;

(3) not less than 10.0 milligrams and not more than 15.0 milligrams of niacin;

(4) not less than 8.0 milligrams and not more than 12.5 milligrams of assimilable iron (Fe).

History: En. Sec. 3, Ch. 274, L. 1971; R.C.M. 1947, 27-803(part).

50-34-108. Vitamin and mineral requirements to be uniform with federal standards. (1) The requirements for vitamin and mineral content specified in 50-34-105 and 50-34-107 are identical with those of the federal standards.

(2) When the vitamin and mineral requirements in 50-34-105 and 50-34-107 are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour and enriched white bread or rolls, the department, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods under this chapter, shall modify or revise the requirements to conform with amended standards governing interstate shipments. The interstate standards referred to are those standards established under the Federal Food, Drug, and Cosmetic Act of 1938, as amended (Title 21 U.S.C. 301 et seq.).

History: (1)En. Sec. 3, Ch. 274, L. 1971; Sec. 27-803, R.C.M. 1947; (2)En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; Sec. 27-804, R.C.M. 1947; R.C.M. 1947, 27-803(part), 27-804(2).

50-34-109. Modification of vitamin and mineral requirements when ingredients scarce. (1) In the event of findings by the department that there is an existing or imminent shortage of an ingredient required by 50-34-105 or 50-34-107 and that because of this shortage the sale and distribution of flour, white bread, or rolls may be impeded by the enforcement of this chapter, the department shall issue an order, to be effective immediately upon issuance, permitting the omission of the ingredient from flour, white bread, or rolls and, if it finds it necessary or appropriate, excepting the foods from labeling requirements until the further order of the department.

(2) These findings may be made without hearing on the basis of an order or of factual information supplied by the appropriate federal agency or officer.

(3) In the absence of an order of the appropriate federal agency or factual information supplied by it, the department, on receiving the sworn statements of 10 or more persons subject to this chapter that they believe a shortage exists or is imminent, shall within 20 days hold a public hearing at which an interested person may present evidence and shall make findings based on the evidence presented. The department shall publish notice of the hearing at least 10 days before it.

(4) When the department has reason to believe that the shortage no longer exists, it shall hold a public hearing, after at least 10 days' notice has been given, at which an interested person may present evidence, and it shall make findings based on the evidence presented. If it finds that a shortage no longer exists, it shall issue an order effective not less than 30 days after its publication revoking the previous order; however, undisposed stocks of flour on hand at the effective date of the revocation order or flour manufactured before the effective date for sale in this state may thereafter be lawfully sold or disposed of.

History: En. Sec. 4, Ch. 274, L. 1971; amd. Sec. 6, Ch. 349, L. 1974; R.C.M. 1947, 27-804(3).

Cross-References

Emergency rules, 2-4-303.

50-34-110. Penalty. A person who violates the provisions of this chapter or the orders or rules promulgated by the department under authority of it shall upon conviction be fined for each offense no more than $100 or be imprisoned for any term not to exceed 30 days.

History: En. Sec. 5, Ch. 274, L. 1971; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 4, Ch. 187, L. 1977; R.C.M. 1947, 27-805.

CHAPTER 35

IMPORTED MEATS
(Repealed. Sec. 1, Ch. 136, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-35-101. En. 27-320 by Sec. 3, Ch. 415, L. 1975; R.C.M. 1947, 27-320.

50-35-102. En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part).

50-35-103. En. 27-318 by Sec. 1, Ch. 415, L. 1975; R.C.M. 1947, 27-318(part); amd. Sec. 1, Ch. 278, L. 1979.

50-35-104. En. 27-319 by Sec. 2, Ch. 415, L. 1975; R.C.M. 1947, 27-319; amd. Sec. 2, Ch. 278, L. 1979.

50-35-105. En. Sec. 3, Ch. 278, L. 1979.

CHAPTER 36

MATTRESSES — SHODDY CONTROL

Part 1 — General Provisions

50-36-101. Definitions.
50-36-102. Department authorized to adopt rules.
50-36-103. Inspections authorized.
50-36-104. Label required.
50-36-105. Prohibited acts.
50-36-106. Condemnation of mattresses.
50-36-107. Each mattress in violation a separate offense.

Part 1

General Provisions

50-36-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Mattress" means any quilted pad, comforter, mattress, mattress pad, hammock pad, bunk quilt, settee, couch, daybed, davenport, overstuffed chair, cushion, or pillow filled with any soft material capable of use for sleeping or reclining purposes.

History: (1)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; (2)En. Sec. 114, Ch. 197, L. 1967; Sec. 69-4701, R.C.M. 1947; R.C.M. 1947, 69-4102(2), 69-4701.

50-36-102. Department authorized to adopt rules. The department may adopt rules and standards for mattress fillings to protect public health.

History: En. Sec. 117, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4704.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-36-103. Inspections authorized. Officers and employees of the department, local health officials, or officials discharging similar duties may enter establishments where mattresses are manufactured, renovated, or sold and examine the premises or records to determine whether statutes or rules and standards adopted by the department are being violated.

History: En. Sec. 118, Ch. 197, L. 1967; amd. Secs. 107 and 109, Ch. 349, L. 1974; R.C.M. 1947, 69-4705.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Local Boards of Health, Title 50, ch. 2.

50-36-104. Label required. A person shall not manufacture or renovate for sale, consignment, or rental a mattress unless it bears a label not smaller than 6 square inches securely attached to the covering which states the name and address of the manufacturer or vendor and type and percent of various materials used in filling. If the mattress contains secondhand material or has been renovated or remade, the label shall contain the words "secondhand material". The labels shall be in the form and contain information as prescribed by the department.

History: En. Sec. 115, Ch. 197, L. 1967; amd. Sec. 104, Ch. 349, L. 1974; R.C.M. 1947, 69-4702.

50-36-105. Prohibited acts. A person shall not:

(1) manufacture or renovate for sale, consignment, or rental a mattress containing material designated as unfit for filling by rules adopted by the department;

(2) manufacture or renovate for sale, consignment, or rental a mattress which contains secondhand materials or materials designated shoddy by the department unless the mattress has been fumigated or sterilized by a process approved by the department;

(3) use in a description for any mattress a term or designation that is likely to mislead;

(4) remove, alter, or deface any label required by 50-36-104.

History: En. Sec. 116, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4703.

50-36-106. Condemnation of mattresses. The department may condemn and seize mattresses found in violation of this chapter or rules or standards adopted by the department. Mattresses seized shall be inspected by the nearest city judge or justice of the peace together with any information obtained. The judge or justice shall dispose of the mattresses or destroy them in the way which will best satisfy the requirements of law.

History: En. Sec. 119, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-4706.

Cross-References

Justices of the Peace, Title 3, ch. 10, part 2.

City Judges, Title 3, ch. 11, part 2.

50-36-107. Each mattress in violation a separate offense. The unit for a separate and distinct offense in violation of this chapter is each mattress made, remade, renovated, sold, offered for sale, delivered, consigned, rented, or possessed with intent to sell, deliver, consign, or rent.

History: En. Sec. 120, Ch. 197, L. 1967; R.C.M. 1947, 69-4707.

CHAPTER 37

FIREWORKS

Part 1 — General Provisions

50-37-101. Fireworks defined.
50-37-102. Where chapter not to apply.
50-37-103. Unlawful sale, transportation, or use of fireworks.
50-37-104. Lawful sales or uses of fireworks — "no smoking" sign — wholesaler's permit.
50-37-105. Permissible fireworks.
50-37-106. Sale of fireworks restricted to certain dates.
50-37-107. Supervised public display of fireworks authorized.
50-37-108. Damage indemnity bond required for public display.
50-37-109. Confiscation.
50-37-110. Penalties.

Chapter Cross-References

Municipal power to regulate bonfires, fireworks, explosives, and inflammable materials, 7-33-4205, 7-33-4206.

Unlawful sale of fireworks, 45-5-623.

Part 1

General Provisions

50-37-101. Fireworks defined. The term "fireworks" means any combustible or explosive composition or any substance, combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and includes sky rockets, roman candles, daygo bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, sparklers or other fireworks of like construction, any fireworks containing any explosive or flammable compound, or any tablets or other device containing any explosive substance.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(part).

50-37-102. Where chapter not to apply. (1) Nothing in this chapter shall be construed to prohibit the sale of any kind of fireworks to a person holding a permit issued under 50-37-107 at the display covered by such permits, the use of fireworks by railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or blasting or other industrial use, or the sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations or organizations composed of veterans of the United States armed forces.

(2) This chapter does not apply to toy paper caps containing less than one-fourth of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe operation of railroads or other classes of public or private transportation, to the military or naval forces of the United States or this state, to peace officers, or to the sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

(3) Nothing in this chapter authorizes the sale of fireworks in a city or town that has banned the sale of fireworks within the city or town as authorized in 7-33-4206.

History: (1)En. Sec. 5, Ch. 143, L. 1947; amd. Sec. 3, Ch. 273, L. 1959; Sec. 69-2704, R.C.M. 1947; (2)En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; Sec. 69-2701, R.C.M. 1947; R.C.M. 1947, 69-2701(part), 69-2704; amd. Sec. 16, Ch. 37, L. 1979; amd. Sec. 4, Ch. 140, L. 1985; amd. Sec. 1, Ch. 410, L. 1989.

Cross-References

Municipal power to regulate fireworks, 7-33-4206.

50-37-103. Unlawful sale, transportation, or use of fireworks. (1) It is unlawful to possess, sell, transport, or use any fireworks within the state except as provided in this chapter.

(2) It is unlawful for an individual under the age of 18 to possess for sale, sell, or offer for sale within the state permissible fireworks enumerated in 50-37-105.

(3) It is unlawful for a wholesaler to sell or offer for sale within the state fireworks without a current fireworks wholesaler permit or in violation of 50-37-105. It is lawful for a wholesaler, however, to transport fireworks within Montana for sale outside of the state.

(4) It is unlawful to sell or offer for sale fireworks as defined in 50-37-101 or permissible fireworks as enumerated in 50-37-105 by mail order solicitation.

(5) It is unlawful to sell or offer for sale fireworks as defined in 50-37-101 or permissible fireworks as enumerated in 50-37-105 within 300 feet of a hospital or church.

(6) It is unlawful for an individual, firm, partnership, or corporation to discharge or cause to be discharged any pyrotechnics, fireworks as defined in 50-37-101, or permissible fireworks as enumerated in 50-37-105:

(a) within the exterior boundaries of a state forest, state park, or state recreation area;

(b) within 100 feet of a fireworks retail sales location;

(c) from, inside, or toward a motor vehicle; or

(d) in the vicinity of another person or group of people or any animal in a manner likely to expose them to the risk of injury.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(1), (5), (6), (8); amd. Sec. 1, Ch. 598, L. 1985.

Cross-References

State parks, Title 23, ch. 1, part 1.

Unlawful sale of fireworks, 45-5-623.

50-37-104. Lawful sales or uses of fireworks — "no smoking" sign — wholesaler's permit. (1) Subject to subsection (2) it is lawful for an individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state the permissible fireworks enumerated in 50-37-105. At any place where permissible fireworks are sold or displayed, a sign reading "NO SMOKING" must be posted in letters at least 4 inches in height where customers are most likely to read it.

(2) Before a fireworks wholesaler may lawfully possess for sale, offer for sale, or sell within the state the permissible fireworks enumerated in 50-37-105, the wholesaler must obtain a fireworks wholesaler permit from the department of commerce.

(3) A person making application for a fireworks wholesaler permit shall:

(a) pay an application fee to the department of commerce, which must be set by the department of commerce commensurate with costs; and

(b) furnish proof under oath, on a form provided by the department, that he:

(i) is at least 18 years of age;

(ii) is of good moral character; and

(iii) has not been convicted of a crime involving the use, possession, or sale of fireworks.

(4) The department of commerce shall adopt rules implementing this section.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(3); amd. Sec. 2, Ch. 598, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Department of Commerce, Title 2, ch. 15, part 18.

50-37-105. Permissible fireworks. Permissible fireworks, excluding sky rockets, roman candles, and bottle rockets, include and are limited to those that meet the definition of "common fireworks" as set forth in the U.S. department of transportation's Hazardous Materials Regulations, 49 C.F.R., parts 173.88 and 173.100, as they read on January 1, 1985, and that comply with the construction, chemical composition, and labeling regulations of the U.S. consumer product safety commission, as set forth in 16 C.F.R., part 1507, as it read on January 1, 1985.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(4); amd. Sec. 3, Ch. 598, L. 1985.

50-37-106. Sale of fireworks restricted to certain dates. No person, firm, or corporation may offer fireworks of any kind for sale at retail before June 24 and after July 5.

History: En. Sec. 2, Ch. 143, L. 1947; amd. Sec. 1, Ch. 136, L. 1957; amd. Sec. 1, Ch. 273, L. 1959; amd. Sec. 1, Ch. 107, L. 1961; amd. Sec. 14, Ch. 423, L. 1971; amd. Sec. 1, Ch. 79, L. 1974; amd. Sec. 17, Ch. 187, L. 1977; R.C.M. 1947, 69-2701(7).

50-37-107. Supervised public display of fireworks authorized. (1) The state fire prevention and investigation program of the department of justice or the governing body of a city, town, or county may, under reasonable rules adopted by them, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.

(2) Each display shall:

(a) be handled by a competent operator, who must be approved by the state fire prevention and investigation program or the governing body of the city, town, or county in which the display is to be held; and

(b) be located, discharged, or fired as, in the opinion of the state fire prevention and investigation program or the chief of the fire department or other officer designated by the governing body of the city, town, or county after proper inspection, not to be hazardous to persons or property.

(3) Application for permits shall be made in writing at least 15 days prior to the date of the display.

(4) After the privilege has been granted, sales, possession, use, and distribution of fireworks for the display are lawful for that purpose only.

(5) No permit granted under this section is transferable.

History: En. Sec. 3, Ch. 143, L. 1947; amd. Sec. 2, Ch. 273, L. 1959; amd. Sec. 18, Ch. 187, L. 1977; R.C.M. 1947, 69-2702; amd. Sec. 1, Ch. 164, L. 1981; amd. Sec. 5, Ch. 140, L. 1985; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

State fire prevention and investigation program, 2-15-2005.

50-37-108. Damage indemnity bond required for public display. The state fire prevention and investigation program or the governing body of the city, town, or county shall require a bond considered adequate by the state fire prevention and investigation program or governing body from the licensee in a sum not less than $500, conditioned for the payment of all damages which may be caused either to a person or persons or to property by reason of the licensed display and arising from any acts of the licensee, his agents, employees, or subcontractors.

History: En. Sec. 4, Ch. 143, L. 1947; R.C.M. 1947, 69-2703; amd. Sec. 6, Ch. 140, L. 1985; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

Indemnity, Title 28, ch. 11, part 3.

50-37-109. Confiscation. A representative of the state fire prevention and investigation program or any sheriff, police officer, or constable shall seize, take, remove, or cause to be removed at the expense of the owner all stocks of fireworks or combustibles offered or exposed for sale, stored, or held in violation of this chapter.

History: En. Sec. 6, Ch. 143, L. 1947; R.C.M. 1947, 69-2705; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

State fire prevention and investigation program, 2-15-2005.

50-37-110. Penalties. Any person, firm, partnership, association, or corporation violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $100 or more than $500 or, in the case of individuals, the members of a partnership, and the responsible officers and agents of an association or corporation, by imprisonment in the county jail for a period of not less than 30 days or more than 6 months or by both such fine and imprisonment.

History: En. Sec. 7, Ch. 143, L. 1947; amd. Sec. 4, Ch. 273, L. 1959; R.C.M. 1947, 69-2706.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Accountability for conduct of corporation, 45-2-312.

CHAPTER 38

EXPLOSIVES

(Repealed. Sec. 3, Ch. 187, L. 1985)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-38-101. En. Sec. 1, Ch. 129, L. 1917; re-en. Sec. 2786, R.C.M. 1921; re-en. Sec. 2786, R.C.M. 1935; R.C.M. 1947, 69-1901.

50-38-102. En. Sec. 19, Ch. 129, L. 1917; re-en. Sec. 2804, R.C.M. 1921; re-en. Sec. 2804, R.C.M. 1935; R.C.M.1947, 69-1919.

50-38-103. En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-104. En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-105. En. Sec. 18, Ch. 129, L. 1917; re-en. Sec. 2803, R.C.M. 1921; re-en. Sec. 2803, R.C.M. 1935; R.C.M. 1947, 69-1918.

50-38-106. En. Sec. 714, Pen. C. 1895; re-en. Sec. 8552, Rev. C. 1907; re-en. Sec. 2813, R.C.M. 1921; re-en. Sec. 2813, R.C.M. 1935; R.C.M. 1947, 69-1928.

50-38-107. En. Sec. 715, Pen. C. 1895; re-en. Sec. 8553, Rev. C. 1907; re-en. Sec. 2814, R.C.M. 1921; re-en. Sec. 2814, R.C.M. 1935; amd. Sec. 56, Ch. 359, L. 1977; R.C.M. 1947, 69-1929; amd. Sec. 7, Ch. 198, L. 1981.

50-38-108. En. Sec. 1, Ch. 124, L. 1909; re-en. Sec. 2805, R.C.M. 1921; re-en. Sec. 2805, R.C.M. 1935; R.C.M. 1947, 69-1920.

50-38-201. En. Sec. 12, Ch. 129, L. 1917; re-en. Sec. 2797, R.C.M. 1921; re-en. Sec. 2797, R.C.M. 1935; R.C.M. 1947, 69-1912.

50-38-202. En. Sec. 14, Ch. 129, L. 1917; re-en. Sec. 2799, R.C.M. 1921; re-en. Sec. 2799, R.C.M. 1935; R.C.M. 1947, 69-1914.

50-38-203. En. Sec. 708, Pen. C. 1895; re-en. Sec. 8546, Rev. C. 1907; re-en. Sec. 2807, R.C.M. 1921; re-en. Sec. 2807, R.C.M. 1935; R.C.M. 1947, 69-1922.

50-38-204. En. Sec. 709, Pen. C. 1895; re-en. Sec. 8547, Rev. C. 1907; re-en. Sec. 2808, R.C.M. 1921; re-en. Sec. 2808, R.C.M. 1935; amd. Sec. 14, Ch. 187, L. 1977; R.C.M. 1947, 69-1923.

50-38-205. En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-206. En. Sec. 6, Ch. 129, L. 1917; re-en. Sec. 2791, R.C.M. 1921; re-en. Sec. 2791, R.C.M. 1935; R.C.M. 1947, 69-1906(part).

50-38-207. En. Sec. 8, Ch. 129, L. 1917; re-en. Sec. 2793, R.C.M. 1921; R.C.M. 1947, 69-1908.

50-38-208 through 50-38-210 reserved.

50-38-211. En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-212. En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-213. En. Sec. 3, Ch. 129, L. 1917; re-en. Sec. 2788, R.C.M. 1921; re-en. Sec. 2788, R.C.M. 1935; R.C.M. 1947, 69-1903(part).

50-38-214. En. Sec. 5, Ch. 129, L. 1917; re-en. Sec. 2790, R.C.M. 1921; re-en. Sec. 2790, R.C.M. 1935; R.C.M. 1947, 69-1905.

50-38-215. En. Sec. 4, Ch. 129, L. 1917; re-en. Sec. 2789, R.C.M. 1921; re-en. Sec. 2789, R.C.M. 1935; R.C.M. 1947, 69-1904.

50-38-216 through 50-38-220 reserved.

50-38-221. En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(part).

50-38-222. En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(a).

50-38-223. En. Sec. 7, Ch. 129, L. 1917; re-en. Sec. 2792, R.C.M. 1921; re-en. Sec. 2792, R.C.M. 1935; R.C.M. 1947, 69-1907(b).

50-38-224 through 50-38-230 reserved.

50-38-231. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-232. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-233. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-234. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part).

50-38-235. En. Sec. 9, Ch. 129, L. 1917; re-en. Sec. 2794, R.C.M. 1921; re-en. Sec. 2794, R.C.M. 1935; R.C.M. 1947, 69-1909(part); amd. Sec. 2, Ch. 239, L. 1983.

50-38-301. En. Sec. 707, Pen. C. 1895; re-en. Sec. 8545, Rev. C. 1907; re-en. Sec. 2806, R.C.M. 1921; re-en. Sec. 2806, R.C.M. 1935; R.C.M. 1947, 69-1921.

50-38-302. En. Sec. 2, Ch. 129, L. 1917; re-en. Sec. 2787, R.C.M. 1921; re-en. Sec. 2787, R.C.M. 1935; R.C.M. 1947, 69-1902(part).

50-38-303. En. Sec. 1, p. 246, L. 1897; re-en. Sec. 8550, Rev. C. 1907; re-en. Sec. 2811, R.C.M. 1921; re-en. Sec. 2811, R.C.M. 1935; R.C.M. 1947, 69-1926.

50-38-304. En. Sec. 711, Pen. C. 1895; re-en. Sec. 8549, Rev. C. 1907; re-en. Sec. 2810, R.C.M. 1921; re-en. Sec. 2810, R.C.M. 1935; amd. Sec. 15, Ch. 187, L. 1977; R.C.M. 1947, 69-1925; amd. Sec. 17, Ch. 37, L. 1979.

CHAPTER 39

FIRE PROTECTION EQUIPMENT

Part 1 — Regulation of Sales, Installation, and Servicing

50-39-101. Certificate of registration, permit, and license required.
50-39-102. Application for certificate, permit, and license.
50-39-103. Inspections and examinations authorized.
50-39-104. Revocations and suspensions authorized.
50-39-105. Fees.

Part 2 — Standardization
(Repealed. Sec. 37, Ch. 706, L. 1991)

Part 1

Regulation of Sales, Installation, and Servicing

50-39-101. Certificate of registration, permit, and license required. A natural person shall obtain a certificate of registration from the department of justice prior to servicing or installing fire extinguishers, fire alarm systems, or fire extinguishing systems. A person or firm shall obtain from the department a permit to sell or a license to install fire extinguishers, fire alarm systems, or fire extinguishing systems prior to engaging in the business.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part); amd. Sec. 9, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In two places substituted reference to Department of Justice for reference to State Fire Marshal; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

State fire prevention and investigation program, 2-15-2005.

50-39-102. Application for certificate, permit, and license. (1) Applications for licenses, permits, or certificates must be made on a form prescribed by the department of justice.

(2) The department shall issue a license to an applicant who submits satisfactory proof that he is properly equipped and staffed to provide the services to be licensed and who pays the required fee.

(3) The department shall issue a certificate of registration to an applicant who scores a passing grade on an examination devised by the department and who pays the required fee.

(4) The department shall issue a sales permit to an applicant who submits the information required by the department on the application form, who submits satisfactory proof that he deals only in equipment that meets the standards and regulations of the department, and who pays the required fee.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(a); amd. Sec. 10, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section substituted reference to Department of Justice for reference to State Fire Marshal; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

State fire prevention and investigation program, 2-15-2005.

50-39-103. Inspections and examinations authorized. The department of justice may conduct inspections, examinations, or hearings prior to the issuance of licenses, permits, or certificates.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part); amd. Sec. 11, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning substituted "department of justice" for "state fire marshal". Amendment effective April 29, 1991.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-39-104. Revocations and suspensions authorized. The department of justice may revoke, suspend, or refuse to issue a license, permit, or certificate for violation of the provisions of this part or any rules promulgated by the department under applicable law.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(part); amd. Sec. 12, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In two places substituted reference to Department of Justice for reference to State Fire Marshal. Amendment effective April 29, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-39-105. Fees. (1) The department of justice shall charge a fee for the inspection and issuance of licenses, permits, and certificates. The fee may not exceed $50 for each license, permit, or certificate issued.

(2) All fees collected under this section must be paid into the general fund.

History: En. 82-1202.1 by Sec. 3, Ch. 229, L. 1967; amd. Sec. 1, Ch. 120, L. 1969; amd. Sec. 25, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 1, Ch. 426, L. 1975; R.C.M. 1947, 82-1202.1(4)(c), (4)(d); amd. Secs. 13, 38, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence, substituted "department of justice" for "state fire marshal or his representative" and after "fee" deleted "not to exceed a total of $25" and inserted second sentence setting fee at no more than $50; and made minor changes in style. Amendment effective April 29, 1991.

Coordination Instruction: Section 38, Ch. 706, L. 1991, provided: "If House Bill No. 809 is not passed and approved creating a fire prevention and investigation account in the state special revenue fund, then [section 13(2) of this act] [directing that fees be deposited in the fire prevention and investigation account] is void." House Bill No. 809 was approved April 29, 1991, as Ch. 703, L. 1991, but did not include creation of a fire prevention and investigation account in the state special revenue fund. Therefore, section 13(2), Ch. 706, L. 1991, amending 50-39-105(2), is void.

Cross-References

State fund structure, 17-2-102.

Part 2

Standardization
(Repealed. Sec. 37, Ch. 706, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

50-39-201. En. Sec. 1, Ch. 53, L. 1929; re-en. Sec. 2762.1, R.C.M. 1935; R.C.M. 1947, 82-1233.

50-39-202. En. Sec. 2, Ch. 53, L. 1929; re-en. Sec. 2762.2, R.C.M. 1935; R.C.M. 1947, 82-1234.

50-39-203. En. Sec. 3, Ch. 53, L. 1929; re-en. 2762.3, R.C.M. 1935; R.C.M. 1947, 82-1235.

CHAPTER 40

SMOKING IN PUBLIC PLACES

Part 1 — Montana Clean Indoor Air Act

50-40-101. Short title.
50-40-102. Purpose.
50-40-103. Definitions.
50-40-104. Designation or reservation of smoking or nonsmoking areas — notice.
50-40-105. No smoking signs in certain places.
50-40-106. Requirements of health care facilities.
50-40-107. Exemptions.
50-40-108. Enforcement.
50-40-109. Penalties.

Part 2 — Government Offices and Work Areas

50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings.
50-40-202. Public policy.
50-40-203. Definitions.
50-40-204. Smoke-free buildings — designated smoking areas.
50-40-205. Signing — smoking receptacles.

Part 1

Montana Clean Indoor Air Act

50-40-101. Short title. This part may be cited as the "Montana Clean Indoor Air Act of 1979".

History: En. Sec. 1, Ch. 368, L. 1979.

50-40-102. Purpose. The purpose of this part is to protect the health of nonsmokers in public places and to provide for reserved areas in some public places for those who choose to smoke.

History: En. Sec. 2, Ch. 368, L. 1979.

50-40-103. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(2) "Enclosed public place" means any indoor area, room, or vehicle used by the general public or serving as a place of work, including but not limited to restaurants, stores, offices, trains, buses, educational or health care facilities, auditoriums, arenas, and assembly and meeting rooms open to the public.

(3) "Establishment" means an enterprise under one roof that serves the public and for which a single person, agency, corporation, or legal entity is responsible.

(4) "Person" means an individual, partnership, corporation, association, political subdivision, or other entity.

(5) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette, pipe, or any smokable product.

(6) "Smoking area" means a designated area in which smoking is permitted.

(7) "Place of work" means an enclosed room where more than one employee works.

History: En. Sec. 3, Ch. 368, L. 1979; amd. Sec. 1, Ch. 460, L. 1981.

50-40-104. Designation or reservation of smoking or nonsmoking areas — notice. (1) The proprietor or manager of an enclosed public place shall:

(a) designate nonsmoking areas with easily readable signs;

(b) reserve a part of the public place for nonsmokers and post easily readable signs designating a smoking area;

(c) designate the entire area as a smoking area by posting a sign that is clearly visible to the public stating this designation; or

(d) designate and reserve the entire area as a nonsmoking area.

(2) The proprietor or manager of an establishment containing enclosed public places shall post a sign in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read and understood, whether or not areas within the establishment have been reserved for nonsmokers.

(3) The proprietor or manager of an establishment containing both a restaurant and a tavern, in which some patrons choose to eat their meals in the tavern, is not required by this part to post a sign described in subsection (2) in the tavern area of the establishment.

(4) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts of the bus.

History: En. Sec. 4, Ch. 368, L. 1979; amd. Sec. 2, Ch. 460, L. 1981; amd. Sec. 2, Ch. 505, L. 1985; amd. Sec. 1, Ch. 458, L. 1989; (4)En. Sec. 2, Ch. 281, L. 1991.

Compiler's Comments

Effective Date: Section 4, Ch. 281, L. 1991, which chapter enacted subsection (4) of this section, provided: "[This act] is effective July 1, 1991."

50-40-105. No smoking signs in certain places. No smoking signs must be conspicuously posted in intrastate buses that are not chartered, elevators, museums, galleries, kitchens, and libraries of any establishment doing business with the general public.

History: En. Sec. 5, Ch. 368, L. 1979; amd. Sec. 1, Ch. 281, L. 1991.

Compiler's Comments

1991 Amendment: Near middle inserted "intrastate buses that are not chartered"; and made minor change in style. Amendment effective July 1, 1991.

50-40-106. Requirements of health care facilities. (1) Health care facilities shall:

(a) ask all in-patients, prior to admission, to designate their preference for a nonsmoking or smoking patient room and, when possible, accommodate such a preference;

(b) prohibit smoking in all kitchens, laboratories, and corridors;

(c) prohibit smoking in storage areas for supplies or materials and wherever flammable liquids, gases, or oxygen is stored or in use;

(d) provide a nonsmoking area in all waiting rooms;

(e) prohibit employees from smoking in patient rooms; and

(f) require visitors to obtain express approval from all patients in the patient room, or from the patients' physicians, prior to smoking.

(2) Nothing in this section shall prohibit a health care facility from banning smoking on all or a part of its premises.

(3) All areas of a health care facility not specifically referred to in this section may be considered smoking areas unless posted otherwise.

History: En. Sec. 6, Ch. 368, L. 1979.

Cross-References

"Health care facility" defined, 50-5-101.

50-40-107. Exemptions. The following shall be exempt from this part:

(1) restrooms;

(2) taverns or bars where meals are not served;

(3) vehicles or rooms seating six or fewer members of the public;

(4) school district buildings and facilities designated as tobacco-free by the board of trustees of the school district;

(5) community college buildings or facilities designated as tobacco-free by the board of trustees of the community college district;

(6) state government buildings declared smoke-free.

History: En. Sec. 7, Ch. 368, L. 1979; amd. Sec. 2, Ch. 466, L. 1989; amd. Sec. 5, Ch. 539, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (6) concerning state government buildings declared smoke-free. Amendment effective May 1, 1991.

50-40-108. Enforcement. The provisions of this part shall be supervised and enforced by the local boards of health under the direction of the department.

History: En. Sec. 8, Ch. 368, L. 1979.

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-40-109. Penalties. A person who fails to designate or reserve a smoking or nonsmoking area in his establishment as provided for in 50-40-104 is guilty of a misdemeanor and is subject to a fine of not more than $25.

History: En. Sec. 3, Ch. 460, L. 1981.

Part 2

Government Offices and Work Areas

50-40-201. Reservation of smoking and nonsmoking areas in work areas in local government buildings. In offices and work areas in buildings maintained by a political subdivision, except a school or community college facility designated as tobacco-free by the board of trustees of the school district or community college district, in which seven or more employees of the political subdivision are employed, the manager or person in charge of the work area shall arrange nonsmoking and smoking areas in a convenient area.

History: En. Sec. 1, Ch. 505, L. 1985; amd. Sec. 1, Ch. 466, L. 1989; amd. Sec. 6, Ch. 539, L. 1991.

Compiler's Comments

1991 Amendment: In two places, before reference to political subdivision, deleted reference to state; and made minor changes in style. Amendment effective May 1, 1991.

50-40-202. Public policy. In recognition of the increased health hazards of passive smoke on the nonsmoker, it is the declared public policy of the state of Montana that all buildings maintained by the state are to be smoke-free.

History: En. Sec. 1, Ch. 539, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 539, L. 1991, provided: "[This act] is effective May 1, 1991."

50-40-203. Definitions. As used in 50-40-202 through 50-40-205, the following definitions apply:

(1) "Agency head" means a director, commissioner, or constitutional officer in charge of an executive, legislative, or judicial branch agency or of an agency of the Montana university system.

(2) "Department" means the department of administration provided for in Title 2, chapter 15, part 10.

(3) "Smoking" means any lighted cigar, cigarette, or pipe or any other lighted tobacco product.

History: En. Sec. 2, Ch. 539, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 539, L. 1991, provided: "[This act] is effective May 1, 1991."

50-40-204. Smoke-free buildings — designated smoking areas. (1) In buildings maintained by the state, smoking is prohibited in the following areas:

(a) general office space;

(b) auditoriums, classrooms, and conference rooms;

(c) elevators;

(d) corridors, lobbies, restrooms, and stairways, except as provided in subsections (2)(b) and (4);

(e) medical care facilities;

(f) libraries; and

(g) hazardous areas.

(2) An agency head shall establish at least one "designated smoking area" in each building, except in those areas listed in subsection (1), suited by architectural design and functional purpose to be used as a smoking area.

(a) An agency head may designate a smoking area in a cafeteria. The size of the area must be determined by an estimate of the number of smoking and nonsmoking patrons served.

(b) An agency head may designate a corridor, lobby, or restroom as a smoking area when it is not possible to designate another smoking area.

(3) In establishing designated smoking areas, as provided in subsection (2), an agency head shall consider:

(a) the number of smokers and nonsmokers in the agency;

(b) the building ventilation system;

(c) the availability of space; and

(d) the protection of nonsmokers from involuntary exposure to smoke.

(4) Agencies in multitenant buildings are encouraged to work together to identify designated smoking areas.

History: En. Sec. 3, Ch. 539, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 539, L. 1991, provided: "[This act] is effective May 1, 1991."

50-40-205. Signing — smoking receptacles. (1) The department shall place signs near each entrance to a building stating that the building is smoke-free.

(2) An agency head shall place signs stating where the designated smoking areas are located.

(3) An agency head is responsible for providing adequate ash trays or receptacles in the designated smoking areas.

(4) In buildings of historical significance, the department shall place signs that are aesthetically pleasing and that fit the architectural style of the building.

History: En. Sec. 4, Ch. 539, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 539, L. 1991, provided: "[This act] is effective May 1, 1991."

CHAPTER 41

LAETRILE

Part 1 — General Provisions

50-41-101. Laetrile defined.
50-41-102. Laetrile authorized.
50-41-103. Hospital may not interfere.
50-41-104. Health care facility liability.

50-41-105. Physician not subject to disciplinary action.
50-41-106. Laetrile not endorsed — permitted as a dietary supplement.
50-41-107. Laetrile optional.

Part 1

General Provisions

50-41-101. Laetrile defined. As used in this chapter, "laetrile", also known as B-17, means a cyanogenetic glycoside, which is processed from the seeds of certain fruits, including apricots, peaches, and plums.

History: En. Sec. 1, Ch. 454, L. 1979.

50-41-102. Laetrile authorized. The manufacture, sale, possession, and distribution of laetrile is lawful within this state.

History: En. Sec. 2, Ch. 454, L. 1979.

50-41-103. Hospital may not interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of laetrile when prescribed or administered by a physician and requested by a patient.

History: En. Sec. 3, Ch. 454, L. 1979.

Cross-References

"Health care facility" and "hospital" defined, 50-5-101.

50-41-104. Health care facility liability. No hospital, health care facility, or employee thereof shall be held liable for the administration of laetrile to any person at the direction of a licensed physician.

History: En. Sec. 4, Ch. 454, L. 1979.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-41-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering laetrile to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 5, Ch. 454, L. 1979.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-41-106. Laetrile not endorsed — permitted as a dietary supplement. This chapter:

(1) is not an endorsement of laetrile for the treatment of any malignancy, disease, illness, or physical condition;

(2) does not prevent a physician from prescribing laetrile as a dietary supplement to a patient not suffering from any known malignancy, disease, illness, or physical condition.

History: **En. Sec. 6, Ch. 454, L. 1979.**

50-41-107. Laetrile optional. This chapter does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute laetrile;

(2) a physician to prescribe laetrile for any patient.

History: **En. Sec. 7, Ch. 454, L. 1979.**

Cross-References

Regulation of the practice of medicine, Title 37, ch. 3.

Regulation of the practice of pharmacy, Title 37, ch. 7.

CHAPTER 42

DIMETHYL SULFOXIDE (DMSO)

Part 1 — General Provisions

50-42-101. DMSO defined.
50-42-102. DMSO authorized.
50-42-103. Hospital not to interfere.
50-42-104. Health care facility nonliability.
50-42-105. Physician not subject to disciplinary action.
50-42-106. DMSO not endorsed.
50-42-107. DMSO optional.

Part 1

General Provisions

Part Cross-References

Drugs and devices, Title 50, ch. 31, part 3.

50-42-101. DMSO defined. As used in this part, “DMSO” means dimethyl sulfoxide.

History: **En. Sec. 2, Ch. 333, L. 1981.**

50-42-102. DMSO authorized. The manufacture, sale, possession, and distribution of DMSO are lawful within this state. However, distribution or sale of DMSO for human use must be by prescription in accordance with 50-31-307. A person who violates this section is subject to the penalties provided for in 50-31-506.

History: En. Sec. 3, Ch. 333, L. 1981.

50-42-103. Hospital not to interfere. A hospital or health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of DMSO when requested by a patient and prescribed or administered by a physician.

History: En. Sec. 4, Ch. 333, L. 1981.

Cross-References

"Health care facility" and "hospital" defined, 50-5-101.

50-42-104. Health care facility nonliability. No hospital, health care facility, pharmacy, or employee thereof shall be held liable for the administration of DMSO to any person at the direction of a physician licensed in Montana.

History: En. Sec. 5, Ch. 333, L. 1981.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-42-105. Physician not subject to disciplinary action. A physician may not be subjected to disciplinary action by the board of medical examiners for prescribing or administering DMSO to a patient under his care as an adjunct to recognized, customary, or accepted modes of therapy in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 6, Ch. 333, L. 1981.

Cross-References

Board of Medical Examiners, Title 37, ch. 3, part 2.

50-42-106. DMSO not endorsed. This part is not an endorsement of DMSO for the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 7, Ch. 333, L. 1981.

50-42-107. DMSO optional. This part does not require:

(1) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute DMSO; or

(2) a physician to prescribe DMSO for any patient.

History: En. Sec. 8, Ch. 333, L. 1981.

Cross-References

Regulation of the practice of medicine, Title 37, ch. 3.

Regulation of the practice of pharmacy, Title 37, ch. 7.

CHAPTER 43

CALCIUM-EAP, HARNOSAL, AND PHOSETAMIN

Part 1 — General Provisions

50-43-101. Purpose.
50-43-102. Definitions.
50-43-103. Authorization of medication.
50-43-104. Health care facility may not interfere.
50-43-105. Health care facility immunity.
50-43-106. Physician not subject to disciplinary action.
50-43-107. Medication not endorsed — permitted as dietary supplement.
50-43-108. Medication not required.

Part 1

General Provisions

50-43-101. Purpose. The purpose of this part is to provide for the continuation of medication initiated by a physician for multiple sclerosis. This medication includes the substances described in this part and has been found to be effective in alleviating the symptoms of multiple sclerosis.

History: En. Sec. 1, Ch. 430, L. 1987.

50-43-102. Definitions. In this part, the following definitions apply:

(1) "Calcium-EAP" means a calcium salt of the monoester (2-ethylamine) of phosphoric acid.

(2) "Harnosal" means a compound of sulfamethizole and sulfaethidole. A 500-milligram tablet contains 350 milligrams of sulfamethizole and 150 milligrams of sulfaethidole.

(3) "Phosetamin" means a compound of potassium salt of the monoester (2-ethylamine) of phosphoric acid, magnesium salt of the monoester (2-ethylamine) of phosphoric acid, and calcium salt of the monoester (2-ethylamine) of phosphoric acid. A 350-milligram tablet contains 145.8 milligrams of the potassium salt, 145.8 milligrams of the magnesium salt, and 58.4 milligrams of the calcium salt.

History: En. Sec. 2, Ch. 430, L. 1987.

50-43-103. Authorization of medication. The manufacture, sale, possession, and distribution of calcium-EAP, harnosal, and phosetamin to provide for the continuation of medication initiated by a physician for multiple sclerosis are lawful within this state.

History: En. Sec. 3, Ch. 430, L. 1987.

50-43-104. Health care facility may not interfere. A health care facility may not interfere with the physician-patient relationship by restricting or forbidding the use of calcium-EAP, harnosal, or phosetamin when prescribed or administered by a physician.

History: En. Sec. 4, Ch. 430, L. 1987.

50-43-105. Health care facility immunity. No health care facility or employee thereof may be held liable for the administration of calcium-EAP, harnosal, or phosetamin to any person.

History: En. Sec. 5, Ch. 430, L. 1987.

50-43-106. Physician not subject to disciplinary action. A physician may not be disciplined by the board of medical examiners for prescribing or administering calcium-EAP, harnosal, or phosetamin to a patient under his care in the treatment of any malignancy, disease, illness, or physical condition.

History: En. Sec. 6, Ch. 430, L. 1987.

50-43-107. Medication not endorsed — permitted as dietary supplement. This part:

(1) is not an endorsement of calcium-EAP, harnosal, or phosetamin for the treatment of any malignancy, disease, illness, or physical condition; and

(2) does not prohibit use of calcium-EAP, harnosal, or phosetamin as a dietary supplement.

History: En. Sec. 7, Ch. 430, L. 1987.

50-43-108. Medication not required. This part does not require:

(1) a physician to prescribe calcium-EAP, harnosal, or phosetamin for any patient; or

(2) a physician, pharmacist, pharmacy, manufacturer, or distributor to manufacture, sell, or distribute calcium-EAP, harnosal, or phosetamin.

History: En. Sec. 8, Ch. 430, L. 1987.

CHAPTER 44

TREATMENT OF CHRONIC RENAL DISEASE

Part 1 — Renal Disease Treatment Program

50-44-101. Legislative intent.
50-44-102. Establishment of program.

Part 1

Renal Disease Treatment Program

50-44-101. Legislative intent. It is the intent of the legislature to insure the establishment of a program for the care and treatment of persons suffering from chronic renal diseases who require lifesaving care and treatment for such renal diseases but who are unable to pay for the services on a continuing basis.

History: En. 71-2501 by Sec. 1, Ch. 453, L. 1975; R.C.M. 1947, 71-2501; Sec. 53-6-201, MCA 1989; redes. 50-44-101 by Code Commissioner, 1991.

50-44-102. Establishment of program. (1) The department of health and environmental sciences shall establish a program to provide treatment to persons suffering from chronic renal diseases, including dialysis and other medical procedures and techniques, which will have a lifesaving effect in the care and treatment of such persons. The department shall extend financial assistance to persons suffering from chronic renal diseases in obtaining the medical, nursing, pharmaceutical, and technical services necessary to care for such diseases, including the rental or purchase of home dialysis equipment and supplies.

(2) The department shall by rule establish standards for determining the amount or duration of financial assistance to be extended to individuals under this program in order that treatment shall be provided to those who are financially unable to obtain services without causing severe economic imbalance in the family economic unit. Such standards shall be established without reference to maximum or minimum income levels.

(3) The department is not liable to any person for a failure to provide financial assistance to that person under this section if sufficient funds are not appropriated by the legislature.

History: En. 71-2502 by Sec. 2, Ch. 453, L. 1975; R.C.M. 1947, 71-2502; amd. Sec. 2, Ch. 692, L. 1983; Sec. 53-6-202, MCA 1989; redes. 50-44-102 by Code Commissioner, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTERS 45 THROUGH 48

RESERVED

CHAPTER 49

FOOD AND NUTRITION

Part 1 — Montana Access to Food and Nutrition Act

50-49-101. Short title.
50-49-102. Purpose.
50-49-103. Definitions.
50-49-104. Terms — vacancies.
50-49-105. Powers and duties.
50-49-106. Gifts and grants.
50-49-107. Public health nutritionist — appointment and duties.
50-49-108. Women, infants and children food supplement program to be available in all counties.

Chapter Cross-References

Nutritionists, Title 37, ch. 25, part 1.

Montana Older Americans Act, Title 52, ch. 3, part 5.

Part 1

Montana Access to Food and Nutrition Act

Part Compiler's Comments

Effective Date: Section 11, Ch. 569, L. 1991, provided that this part is effective July 1, 1991.

50-49-101. Short title. This part may be cited as the "Montana Access to Food and Nutrition Act".

History: En. Sec. 2, Ch. 569, L. 1991.

50-49-102. Purpose. It is the policy of the state of Montana that all citizens should have access to food programs and nutrition services to prevent any needy citizen from experiencing hunger and poor nutrition and their impact on physical and mental health.

History: En. Sec. 1, Ch. 569, L. 1991.

50-49-103. Definitions. For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Council" means the state advisory council on food and nutrition established in 2-15-2210.

(2) "Department" means the department of health and environmental sciences as provided in 2-15-2101.

(3) "Food programs and nutrition services" means public or private programs to provide food and nutrition assistance to persons who have need. The term includes but is not limited to the food stamp program, food programs for the elderly, and supplemental food programs for women, infants, and children.

History: **En. Sec. 3, Ch. 569, L. 1991.**

50-49-104. Terms — vacancies. (1) Members of the council shall serve staggered terms of 3 years.

(2) A vacancy on the council must be filled in the same manner as the original appointment.

History: **En. Sec. 5, Ch. 569, L. 1991.**

50-49-105. Powers and duties. The duties of the council are to:

(1) advise all state agencies on policies to coordinate the operation of public and private food assistance programs;

(2) annually report to the governor on the state of access to food and nutrition in Montana;

(3) provide a forum for review and discussion of state policies affecting hunger, food programs, and the status of nutrition for the population at risk;

(4) promote food assistance programs within the private and agricultural sectors of Montana's economy;

(5) recognize public and private acts and individuals who significantly contribute to the reduction of hunger in Montana; and

(6) educate the public as to problems and needs of hungry citizens.

History: **En. Sec. 6, Ch. 569, L. 1991.**

50-49-106. Gifts and grants. The council may accept contributions, gifts, and grants to fund its activities.

History: **En. Sec. 7, Ch. 569, L. 1991.**

50-49-107. Public health nutritionist — appointment and duties. The director of the department shall appoint a registered dietitian as a public health nutritionist. The appointment of the public health nutritionist may not be required unless funding for the position is available. The public health nutritionist shall:

(1) establish a program of public education and technical assistance for programs that provide food assistance;

(2) provide staff assistance to the council;

(3) provide technical assistance to the governor's advisory council on aging; and

(4) provide technical assistance to health care and public health agencies.

History: **En. Sec. 8, Ch. 569, L. 1991.**

50-49-108. Women, infants and children food supplement program to be available in all counties. The department shall provide the 1993 legislature with a plan to provide the services of the women, infants and children (WIC) food supplement program to counties that are currently not served by the program.

History: **En. Sec. 9, Ch. 569, L. 1991.**

CHAPTER 50

FOOD ESTABLISHMENTS

Part 1 — General Provisions

50-50-101. Purpose of regulation.
50-50-102. Definitions.
50-50-103. Department authorized to adopt rules.
50-50-104. Cooperative agreements authorized.
50-50-105. Diseased person not to handle food.
50-50-106. Injunctions.
50-50-107. County attorney to prosecute violations.
50-50-108. Violation of chapter a misdemeanor.
50-50-109. Civil penalties — injunctions not barred.
50-50-110. Costs and expenses — recovery by department or county.

Part 2 — Licensing

50-50-201. License required.
50-50-202. Establishments exempt from license requirement.
50-50-203. Application for license.
50-50-204. Right to license.
50-50-205. License fee — late fee — preemption of local authority — exception.
50-50-206. License not transferable.
50-50-207. Expiration date of license.
50-50-208. Local board to report number of licensees to department.
50-50-209. Cancellation of license.
50-50-210. Submission of plan of correction as bar to cancellation.
50-50-211. Notice and hearing required.
50-50-212. Cancellation of license for multiple-type establishment.
50-50-213. Return of license for alteration or destruction.
50-50-214. Notification of and validation by local health officer.
50-50-215. Refusal by local health officer — appeal to board.
50-50-216. Special revenue account.

Part 3 — Inspections

50-50-301. Health officers and sanitarians to make investigations and inspections.
50-50-302. Health officers and sanitarians to have free access.
50-50-303. Licensee to furnish food samples.
50-50-304. Discovery of food capable of causing food-borne illness.
50-50-305. Department to pay local board for inspections and enforcement.

Part 4 — Frozen Food Lockers

50-50-401. Tagging or declaration requirements for stored meat.
50-50-402. Plant owner not responsible for violation of game laws.
50-50-403. Liability of frozen food plant operators restricted.

Part 1

General Provisions

50-50-101. Purpose of regulation. Regulation of establishments defined in 50-50-102 is required to prevent and eliminate conditions and practices which endanger public health.

History: En. Sec. 1, Ch. 17, L. 1967; R.C.M. 1947, 27-611.

50-50-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(2) "Commercial establishment" means an establishment operated primarily for profit.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(4) "Establishment" means a food manufacturing establishment, meat market, food service establishment, food warehouse, frozen food plant, commercial food processor, or perishable food dealer.

(5) "Food" means an edible substance, beverage, or ingredient used, intended for use, or for sale for human consumption.

(6) "Food manufacturing establishment" means a commercial establishment and buildings or structures in connection with it used to manufacture or prepare food for sale or human consumption, but does not include milk producers' facilities, milk pasteurization facilities, milk product manufacturing plants, slaughterhouses, or meat packing plants.

(7) "Food service establishment" means a fixed or mobile restaurant, coffee shop, cafeteria, short-order cafe, luncheonette, grille, tearoom, sandwich shop, soda fountain, food store serving food or beverage samples, food or drink vending machine, tavern, bar, cocktail lounge, nightclub, industrial feeding establishment, catering kitchen, commissary, private organization routinely serving the public, or similar place where food or drink is prepared, served, or provided to the public with or without charge. The term does not include establishments, vendors, or vending machines which sell or serve only packaged nonperishable foods in their unbroken original containers or a private organization serving food only to its members.

(8) "Food warehouse" means a commercial establishment and buildings or structures in connection with it used to store food, drugs, or cosmetics for distribution to retail outlets, but does not include a wine, beer, or soft drink warehouse that is separate from facilities where brewing occurs.

(9) "Frozen food plant" means a place used to freeze, process, or store food, including facilities used in conjunction with the frozen food plant, and a place where individual compartments are offered to the public on a rental or other basis.

(10) "Meat market" means a commercial establishment and buildings or structures in connection with it used to process, store, or display meat or meat products for sale to the public or for human consumption.

(11) "Nonprofit organization" means any organization qualifying as a tax-exempt organization under 26 U.S.C. 501.

(12) "Perishable food dealer" means a person or commercial establishment which is in the business of purchasing and selling perishable food to the public.

(13) "Person" means a person, partnership, corporation, association, cooperative group, or other entity engaged in operating, owning, or offering services of an establishment.

History: En. Sec. 2, Ch. 17, L. 1967; amd. Sec. 1, Ch. 130, L. 1971; amd. Sec. 1, Ch. 349, L. 1974; R.C.M. 1947, 27-612; amd. Sec. 1, Ch. 199, L. 1987; amd. Sec. 1, Ch. 732, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definitions of commercial establishment and food warehouse; and in definition of establishment inserted "food warehouse".

50-50-103. Department authorized to adopt rules. To protect public health, the department may adopt rules relating to the operation of establishments defined in 50-50-102, including coverage of food, personnel, food equipment and utensils, sanitary facilities and controls, construction and fixtures, and housekeeping.

History: En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-50-104. Cooperative agreements authorized. The department may enter into cooperative agreements with other state agencies and political subdivisions of the state to carry out the provisions of this chapter.

History: En. Sec. 10, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-620(part).

Cross-References

Interlocal cooperation, Art. XI, sec. 7, Mont. Const.

Interlocal agreements, Title 7, ch. 11, part 1.

50-50-105. Diseased person not to handle food. A person who has a communicable disease may not work in any establishment or in the handling or processing of food.

History: En. Sec. 9, Ch. 17, L. 1967; R.C.M. 1947, 27-619.

50-50-106. Injunctions. Notwithstanding any other provision of this chapter, the department, local, county, or district health officer or sanitarian may bring an action for an injunction against the continuation of an alleged violation of this chapter.

History: En. 27-615.2 by Sec. 3, Ch. 508, L. 1975; R.C.M. 1947, 27-615.2.

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-50-107. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(5).

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

50-50-108. Violation of chapter a misdemeanor. A person who violates provisions of this chapter or rules adopted by the department under this chapter is guilty of a misdemeanor. Upon conviction, he shall be:

(1) fined not less than $50 or more than $100 for the first offense;

(2) fined not less than $75 or more than $200 for the second offense;

(3) fined not less than $200 and imprisoned in the county jail for not more than 90 days for the third and subsequent offenses.

History: En. Sec. 15, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-625.

50-50-109. Civil penalties — injunctions not barred. (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

History: En. Sec. 7, Ch. 732, L. 1991.

Cross-References

Injunctions, Title 27, ch. 19.

50-50-110. Costs and expenses — recovery by department or county. In a civil action initiated by the department or county under this chapter, the court may, by petition of the department or county, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter in the case of a willful violation. These costs are limited to the direct costs of investigations and other expenses.

History: En. Sec. 8, Ch. 732, L. 1991.

Part 2

Licensing

50-50-201. License required. (1) Except as provided in 50-50-202, a person operating an establishment shall procure an annual license from the department.

(2) A separate license is required for each establishment, but if more than one type of establishment is operated on the same premises and under the same management, only one license is required.

(3) Only one license is required for a person owning and operating one or more vending machines.

(4) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(1) thru (3); amd. Sec. 2, Ch. 200, L. 1979; amd. Sec. 2, Ch. 199, L. 1987.

Cross-References

Carrying on business without license — penalty, 7-21-2113.

Cities authorized to license soft drink establishments, 7-21-4201.

Local Boards of Health, Title 50, ch. 2.

50-50-202. Establishments exempt from license requirement. (1) Establishments owned or operated by the state or a political subdivision of the state are exempt from licensure but must comply with the requirements of this chapter and rules adopted by the department under this chapter.

(2) No license is required to operate an establishment if it is operated by a nonprofit organization for a period of less than 14 days in 1 calendar year. An establishment exempt from licensure under this subsection must:

(a) be operated in compliance with the remaining provisions of this chapter and rules adopted by the department under this chapter; and

(b) prior to each operation register with the local health officer or sanitarian on forms provided by the department.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(6); amd. Sec. 3, Ch. 199, L. 1987.

Cross-References

Carrying on business without license — penalty, 7-21-2113.

50-50-203. Application for license. An application for a license is made to the department on forms and contains information required by the department.

History: En. Sec. 4, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(1).

50-50-204. Right to license. Licenses shall be granted as a matter of right unless grounds for denial or cancellation exist.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(7).

Cross-References

Carrying on business without license — penalty, 7-21-2113.

Discrimination in licensing prohibited, 49-3-204.

50-50-205. License fee — late fee — preemption of local authority — exception. (1) For each license issued, the department shall collect a fee of $60. It shall deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 7.5% of the fees into the general fund, and 7.5% of the fees into the account provided for in 50-50-216.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-50-216.

(3) A county or other local government may not impose an inspection fee or charge in addition to the fee provided for in subsection (1) unless a violation of this chapter or rule persists and is not corrected after two visits to the establishment.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(2); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 1, Ch. 336, L. 1983; amd. Sec. 1, Ch. 247, L. 1989; amd. Sec. 2, Ch. 732, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at end of first sentence, raised fee from $30 to $60 and in second sentence, after "collected", substituted "under this section into" for "in the state special revenue fund to the credit of", deleted subsection reference to 50-2-108, and after "-50-2-108" substituted "7.5% of the fees into the general fund, and 7.5% of the fees into the account provided for in 50-50-216" for "and the balance of the fees in the state general fund"; at end of (2) substituted "account provided for in 50-50-216" for "state general fund"; inserted (3) prohibiting county or local government from imposing additional inspection fee or charge unless violation of chapter or rule persists and is not corrected in two visits; and made minor changes in style.

Cross-References

State fund structure, 17-2-102.

50-50-206. License not transferable. Licenses are not transferable or applicable to any premises other than that for which the license was issued.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(5).

50-50-207. Expiration date of license. Licenses expire on December 31 following the date of issue unless canceled for cause.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-613(4).

50-50-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed under this chapter.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part).

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-50-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).

50-50-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(part).

50-50-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for cancellation or denial or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(2).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-50-212. Cancellation of license for multiple-type establishment. When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department. A multiple-type establishment includes an establishment authorized by 50-50-201(2).

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(3).

50-50-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: En. Sec. 5, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; amd. Sec. 111, Ch. 349, L. 1974; amd. Sec. 2, Ch. 508, L. 1975; R.C.M. 1947, 27-615(4).

50-50-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: En. Sec. 5, Ch. 200, L. 1979.

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-50-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

Local Boards of Health, Title 50, ch. 2.

50-50-216. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

History: En. Sec. 3, Ch. 732, L. 1991.

Part 3

Inspections

Part Cross-References

Municipal power to inspect foodstuffs and regulate soft drink establishments, 7-21-4201, 7-21-4202.

50-50-301. Health officers and sanitarians to make investigations and inspections. State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(1); amd. Sec. 4, Ch. 732, L. 1991.

Compiler's Comments

1991 Amendment: After "officers" inserted "sanitarians-in-training", before "sanitarians" inserted "registered", and after "sanitarians" deleted "or other authorized persons"; and made minor changes in style.

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-50-302. Health officers and sanitarians to have free access. State and local health officers, sanitarians-in-training, and sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(2); amd. Sec. 5, Ch. 732, L. 1991.

Compiler's Comments

1991 Amendment: After "officers" inserted "sanitarians-in-training and", after "sanitarians" substituted "must be provided" for "and other authorized persons shall have", and after "hours" inserted "for the purpose of conducting investigations and inspections as required under this chapter".

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-50-303. Licensee to furnish food samples. Persons licensed under part 2 shall furnish food samples for analysis as required by rules adopted by the department.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(3).

50-50-304. Discovery of food capable of causing food-borne illness. If a state or local health officer, sanitarian, or other authorized person finds food that is capable of causing food-borne illness, he shall issue a report in writing recommending that the food be withheld from sale to the public. A duplicate copy of the report, properly authenticated, is admissible in evidence in any action or proceeding where the condition of the food at the time of the inspection is material.

History: En. Sec. 11, Ch. 17, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 27-621(4).

50-50-305. Department to pay local board for inspections and enforcement. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only for the purpose of inspecting establishments licensed under this chapter and enforcing the provisions of this chapter; provided, however, that:

(a) there is a functioning local board of health; and

(b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

(i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted under it; and

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department,

within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted under it.

History: En. Sec. 3, Ch. 17, L. 1967; amd. Sec. 1, Ch. 48, L. 1973; amd. Sec. 1, Ch. 508, L. 1975; R.C.M. 1947, 27-614(part); amd. Sec. 5, Ch. 336, L. 1983; amd. Sec. 6, Ch. 732, L. 1991.

Compiler's Comments

1991 Amendment: In (1) deleted subsection reference to 50-2-108 and after "chapter" inserted "and enforcing the provisions of this chapter"; in (1)(b) inserted "sanitarians-in-training" and before "sanitarians" inserted "registered"; in (1)(b)(i), before "enforcement", inserted "inspections and"; inserted (1)(b)(ii) requiring local health board to meet minimum program performance standards established under rules adopted by Department; in (2), after "health", inserted "pursuant to subsection (1)" and after "authority and" substituted "must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose" for "shall be in addition to the funds appropriated under 50-2-108 through 50-2-114"; inserted (3) authorizing Department to use funds in account not paid to local health board within any jurisdiction not qualifying to receive payments from account to enforce provisions of chapter and adopted rules; and made minor changes in style.

Part 4

Frozen Food Lockers

Part Cross-References

Frozen food plant operator's lien for rent, 71-3-1505.

50-50-401. Tagging or declaration requirements for stored meat. (1) The owner or operator of an establishment, as defined in this chapter, shall not receive the carcass of a game animal, game bird, or any quarter, half, or whole carcass of beef or veal unless:

(a) it is properly stamped or tagged; or

(b) a written declaration is filed by the owner stating how it was obtained, date placed in the locker, and weight and type of meat.

(2) A declaration made under subsection (1)(b) of this section shall be retained for 1 year and shall be open to inspection by employees of the department.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

Cross-References

Hunting and trapping licenses, Title 87, ch. 2.

50-50-402. Plant owner not responsible for violation of game laws. A person who owns or operates a frozen food plant which offers individual compartments to the public is not responsible for violation of game laws by persons who rent locker space from him.

History: En. Sec. 14, Ch. 17, L. 1967; R.C.M. 1947, 27-624(part).

Cross-References
Fish and wildlife laws, Title 87.

50-50-403. Liability of frozen food plant operators restricted. The liability for loss of food by the owner or operator of a frozen food plant which offers individual compartments to the public is limited to negligence in operation or negligence of his employees.

History: En. Sec. 12, Ch. 17, L. 1967; R.C.M. 1947, 27-622.

Cross-References
Liability for negligence, 27-1-701, 27-1-702.

Liability of principal for agent's negligence, 28-10-602.

CHAPTER 51

HOTELS, MOTELS, AND ROOMINGHOUSES

Part 1 — General Provisions

50-51-101. Purpose of regulation.
50-51-102. Definitions.
50-51-103. Department authorized to adopt rules.
50-51-104. Cooperative agreements authorized.
50-51-105. County attorney to prosecute violations.
50-51-106. Violation of chapter a misdemeanor.
50-51-107. Provision of nursing services or personal-care services by the facility prohibited.
50-51-108 and 50-51-109 reserved.
50-51-110. Special revenue account.

Part 2 — Licensing

50-51-201. License required.
50-51-202. Application for license.
50-51-203. Right to renewal.
50-51-204. License fee — late fee.
50-51-205. License fee to supersede other fees.
50-51-206. License not transferable.
50-51-207. Expiration date of license.
50-51-208. Local board to report number of licensees to department.
50-51-209. Cancellation of license.
50-51-210. Submission of plan of correction as bar to cancellation.
50-51-211. Notice and hearing required.
50-51-212. Cancellation of license for multiple-type establishment.
50-51-213. Return of license for alteration or destruction.
50-51-214. Notification of and validation by local health officer.
50-51-215. Refusal by local health officer — appeal to board.

Part 3 — Inspections

50-51-301. Health officers to make investigations and inspections.
50-51-302. Health officers to have free access.
50-51-303. Department to pay local board for inspections and enforcement.

Part 4 — Penalties

50-51-401. Civil penalties — injunctions not barred.
50-51-402. Injunctions.

50-51-403. Costs and expenses — recovery by department or county.

Chapter Cross-References

Public swimming pools, Title 50, ch. 53.

Fire safety in public buildings, Title 50, ch. 61.

Bailments to innkeepers, Title 70, ch. 6, part 5.

Hotelkeepers' liens, Title 71, ch. 3, part 14.

Part 1

General Provisions

50-51-101. Purpose of regulation. It is hereby found and declared that the public welfare requires control and regulation of the operation of establishments providing lodging space accommodations, as defined in 50-51-102 hereof, and the control, inspection, and regulation of persons engaged therein in order to prevent or eliminate unsanitary and unhealthful conditions and practices, which conditions and practices may endanger public health. It is further found and declared that the regulation of establishments providing lodging space accommodations as above outlined is in the interest of social well-being and the health and safety of the state and all of its people.

History: En. Sec. 1, Ch. 18, L. 1967; amd. Sec. 1, Ch. 485, L. 1973; R.C.M. 1947, 34-301.

50-51-102. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Board" means the board of health and environmental sciences.

(2) "Commercial establishment" means an establishment operated primarily for profit.

(3) "Department" means the department of health and environmental sciences.

(4) "Establishment" means a hotel, motel, roominghouse, boardinghouse, retirement home, or tourist home.

(5) "Hotel" or "motel" includes a building or structure kept, used, maintained as, advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodginghouse, or place where sleeping accommodations are furnished for a fee to transient guests, with or without meals.

(6) "Person" includes an individual, partnership, corporation, association, county, municipality, cooperative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, boardinghouse, tourist home, retirement home, or roominghouse.

(7) "Roominghouse", "boardinghouse", or "retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly, or permanent basis, whether or not meals or central kitchens are provided but without separated cooking facilities or kitchens within each room, and whose

occupants do not need professional nursing or personal-care services provided by the facility.

(8) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(9) "Transient guest" means a guest for only a brief stay, such as the traveling public.

History: En. Sec. 2, Ch. 18, L. 1967; amd. Sec. 2, Ch. 485, L. 1973; amd. Sec. 1, Ch. 325, L. 1977; R.C.M. 1947, 34-302; amd. Sec. 8, Ch. 597, L. 1983; amd. Sec. 1, Ch. 730, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definitions of commercial establishment and establishment; in definition of "person", after "motel", inserted "boardinghouse"; and made minor change in style.

50-51-103. Department authorized to adopt rules. The department may adopt and enforce rules to preserve the public health and safety. These rules shall relate to construction, furnishings, housekeeping, personnel, sanitary facilities and controls, water supply, sewerage and sewage disposal system, refuse collection and disposal, registration and supervision, and fire and life safety code.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(a).

50-51-104. Cooperative agreements authorized. The department is hereby authorized to enter into cooperative agreements with any of the state agencies or political subdivisions for the purpose of carrying out the provisions of this chapter or any part thereof.

History: En. Sec. 6, Ch. 18, L. 1967; amd. Sec. 5, Ch. 485, L. 1973; R.C.M. 1947, 34-306(b).

Cross-References

Interlocal cooperation, Art. XI, sec. 7, Mont. Const.

Interlocal agreements, Title 7, ch. 11, part 1.

50-51-105. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(5).

Cross-References

Office of County Attorney, Title 7, ch. 4, part 7.

50-51-106. Violation of chapter a misdemeanor. Any person violating any provision of this chapter or regulation made hereunder, except 50-51-107, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense and for the third and subsequent offenses not less than $200 and by imprisonment in the county jail not to exceed 90 days.

History: **En. Sec. 9, Ch. 18, L. 1967; R.C.M. 1947, 34-309; amd. Sec. 18, Ch. 37, L. 1979.**

50-51-107. Provision of nursing services or personal-care services by the facility prohibited. (1) Hotels, motels, boardinghouses, roominghouses, or similar accommodations may not provide professional nursing services or personal-care services. A resident of a hotel, motel, boardinghouse, roominghouse, or similar accommodation may have personal-care, medical, or nursing-related services provided for him in such facility by a third-party provider.

(2) Whenever a complaint is filed with the department that a person in need of professional nursing services is residing in a roominghouse or other similar accommodation not licensed to provide such service, the department shall investigate and may require appropriate care or placement of such person if it is found that professional nursing services are needed.

History: **En. 34-311, 34-312 by Secs. 2, 3, Ch. 325, L. 1977; R.C.M. 1947, 34-311, 34-312; amd. Sec. 9, Ch. 597, L. 1983.**

Cross-References

Medical services and boarding homes for the aged, Title 7, ch. 34.

Health care services, Title 53, ch. 6.

50-51-108 and 50-51-109 reserved.

50-51-110. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

History: **En. Sec. 4, Ch. 730, L. 1991.**

Part 2

Licensing

50-51-201. License required. (1) Each year, every person engaged in the business of conducting or operating a hotel, motel, tourist home, boardinghouse, retirement home, or roominghouse shall procure a license issued by the department.

(2) A separate license is required for each establishment; however, where more than one of each type of establishment is operated on the same premises and under the same management, only one license is required which shall enumerate on the certificate thereof the types of establishments licensed.

(3) Before a license may be issued by the department it must be validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 3, Ch. 200, L. 1979; amd. Sec. 2, Ch. 730, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "tourist home", inserted "boardinghouse".

Cross-References

Discrimination in licensing prohibited, 49-3-204.

One-step licensing — inspection by other department, Title 50, ch. 8.

50-51-202. Application for license. Application for a license shall be made in writing to the department on such forms and with such pertinent information as it considers necessary.

History: En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; R.C.M. 1947, 34-303(part); amd. Sec. 19, Ch. 37, L. 1979.

50-51-203. Right to renewal. (1) Existing licenses shall be renewed as a matter of right, unless conditions exist which are grounds for a cancellation or denial of a license.

(2) Renewal may be obtained annually by paying the required annual license fee.

History: (1)En. Sec. 3, Ch. 18, L. 1967; amd. Sec. 3, Ch. 485, L. 1973; Sec. 34-303, R.C.M. 1947; (2)En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; Sec. 34-304, R.C.M. 1947; R.C.M. 1947, 34-303(part), 34-304(part).

50-51-204. License fee — late fee. (1) There shall be paid to the department with each application for such license or for renewal of such license an annual license fee of $40. The department shall deposit 85% of the fees collected under this section into the local board inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees into the account provided for in 50-51-110.

(2) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year. The late fee is $25 and must be deposited in the account provided for in 50-51-110.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(a); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 2, Ch. 336, L. 1983; amd. Sec. 2, Ch. 247, L. 1989; amd. Sec. 3, Ch. 730, L. 1991.

Compiler's Comments

1991 Amendment: In (1), at end of first sentence, increased license fee from $30 to $40 and in second sentence, after "collected", substituted "under this section into" for "in the state special revenue fund to the credit of", deleted subsection reference to 50-2-108, and substituted "11.25% of the fees into the general fund, and 3.75% of the fees into the account provided for in 50-51-110" for "and the balance of the fees in the general fund"; and at end of (2) substituted "account provided for in 50-51-110" for "state general fund".

Cross-References

State fund structure, 17-2-102.

50-51-205. License fee to supersede other fees. Payment of the license fee stipulated herein shall be accepted in lieu of any and all existing state fees and charges for like purposes or intent which may be existent prior to the adoption of this chapter.

History: En. Sec. 10, Ch. 18, L. 1967; R.C.M. 1947, 34-310.

50-51-206. License not transferable. Such license shall not be transferable or be applicable to any premises other than that for which originally issued.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-207. Expiration date of license. Each license shall expire on December 31 following its date of issue unless canceled for cause.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

50-51-208. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction that are licensed pursuant to this part.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part).

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-51-209. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).

50-51-210. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(part).

50-51-211. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds therefor or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In such case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(2); amd. Sec. 3, Ch. 239, L. 1983.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-51-212. Cancellation of license for multiple-type establishment. When a multiple-type establishment is licensed by the department, the denial or cancellation of the license may affect the entire establishment or only a portion of it as determined by the department (a multiple-type establishment includes two or more of the following: hotel, motel, or tourist home).

History: **En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(3).**

50-51-213. Return of license for alteration or destruction. On cancellation of a license or the right to operate one or more of the multiple-type establishments under the same license, the license certificate shall be returned to the department for destruction or deletion of types of establishment as the department may direct in its notice of cancellation.

History: **En. Sec. 5, Ch. 18, L. 1967; amd. Sec. 7, Ch. 349, L. 1974; amd. Sec. 2, Ch. 505, L. 1975; R.C.M. 1947, 34-305(4).**

50-51-214. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: **En. Sec. 5, Ch. 200, L. 1979.**

Cross-References

"Local health officer" defined, 50-2-101.

50-51-215. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: **En. Sec. 6, Ch. 200, L. 1979.**

Cross-References

Contested cases — Montana Administrative Procedure Act, Title 2, ch. 4, part 6.

Part 3

Inspections

50-51-301. Health officers to make investigations and inspections. State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

History: En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(a); amd. Sec. 5, Ch. 730, L. 1991.

Compiler's Comments

1991 Amendment: Substituted present text concerning investigations and inspections pursuant to rules for former text that read: "(1) The department, through its employees and through local, county, and district health officers, sanitarians, or other authorized representatives, shall make all necessary investigations and inspections for enforcement of this chapter.

(2) Each local, county, or district health officer, sanitarian, or other authorized representative shall make regular inspections as the rules of the department may direct and such special inspections as the department may from time to time direct, and he shall make such reports relative to conditions existing within his district at such times and in such manner as the department may direct".

Cross-References

Licensing of sanitarians, Title 37, ch. 40.

Local Boards of Health, Title 50, ch. 2.

One-step licensing — inspection by other department, Title 50, ch. 8.

50-51-302. Health officers to have free access. State and local health officers, sanitarians-in-training, and registered sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

History: En. Sec. 7, Ch. 18, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 34-307(b); amd. Sec. 6, Ch. 730, L. 1991.

Compiler's Comments

1991 Amendment: Substituted present text concerning access to establishments for investigations and inspections for former text that read: "All persons authorized by this chapter or by regulations adopted under this chapter shall have free access at all reasonable hours to any of the establishments listed and defined in 50-51-102 for the purpose of making inspections".

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-51-303. Department to pay local board for inspections and enforcement. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only for the purpose of inspecting establishments licensed under this chapter and enforcing the provisions of this chapter; provided, however, that:

(a) there is a functioning local board of health; and

(b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

(i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted under it; and

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be available for the same purpose.

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund account, to enforce the provisions of this chapter and the rules adopted under it.

History: En. Sec. 4, Ch. 18, L. 1967; amd. Sec. 4, Ch. 485, L. 1973; amd. Sec. 1, Ch. 505, L. 1975; R.C.M. 1947, 34-304(part); amd. Sec. 6, Ch. 336, L. 1983; amd. Sec. 7, Ch. 730, L. 1991.

Compiler's Comments

1991 Amendment: In (1) deleted subsection reference to 50-2-108 and near end inserted "and enforcing the provisions of this chapter"; in (1)(b) inserted "sanitarians-in-training" and before "sanitarians" inserted "registered"; in (1)(b)(i) inserted "inspections and"; inserted (1)(b)(ii) concerning performance standards; in (2), after "health", inserted "pursuant to subsection (1)" and at end substituted "must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be available for the same purpose" for "shall be in addition to the funds appropriated under 50-2-108 through 50-2-114"; inserted (3) concerning use of funds; and made minor changes in style.

Cross-References

Local Boards of Health, Title 50, ch. 2.

Part 4

Penalties

50-51-401. Civil penalties — injunctions not barred. (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

History: En. Sec. 8, Ch. 730, L. 1991.

50-51-402. Injunctions. The department or a local board of health may petition the district court to enjoin any action in violation of this chapter or of a rule adopted by the department pursuant to this chapter.

History: En. Sec. 9, Ch. 730, L. 1991.

50-51-403. Costs and expenses — recovery by department or county. In a civil action initiated by the department or a county under this chapter, the court may, by petition of the department or county, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter.

History: En. Sec. 10, Ch. 730, L. 1991.

CHAPTER 52

TOURIST CAMPGROUNDS AND TRAILER COURTS

Part 1 — General Provisions

50-52-101. Definitions.
50-52-102. Department to adopt rules.
50-52-103. Duty to obtain license and permit inspections.
50-52-104. County attorney to prosecute violations.
50-52-105. Violation of chapter a misdemeanor.
50-52-106. Injunction.
50-52-107. Civil penalties — injunctions not barred.
50-52-108. Costs and expenses — recovery by department or county.

Part 2 — Licensing

50-52-201. Application for license.
50-52-202. License fee — late fee.
50-52-203. Expiration date of license.
50-52-204. Local board to report number of licensees to department.
50-52-205. Cancellation of license.
50-52-206. Submission of plan of correction as bar to cancellation.
50-52-207. Notice and hearing required.
50-52-208. Notification of and validation by local health officer.
50-52-209. Refusal by local health officer — appeal to board.
50-52-210. Special revenue account.

Part 3 — Inspections

50-52-301. Health officers and sanitarians to make investigations and inspections.
50-52-302. Department to pay local board for inspection and enforcement.
50-52-303. Health officers and sanitarians to have access to establishments.

Part 1

General Provisions

50-52-101. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Campground" means a parcel of land available to and principally used by the public for camping, where persons can camp, secure tents or cabins, or park trailers for camping and sleeping purposes.

(2) "Department" means the department of health and environmental sciences.

(3) "Establishment" means a campground, trailer court, work camp, or youth camp.

(4) "Parcel of land" means a unit of land all parts of which are contiguous, including contiguous lots, in the possession of, owned by, or managed by the same person.

(5) "Person" includes an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of a campground, trailer court, work camp, or youth camp.

(6) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

(7) "Trailer court" means a parcel of land upon which two or more spaces are available to the public and designated for occupancy by trailers or mobile homes for use as residences, except that the term does not include a parcel composed of platted lots, each lot of which is filed with the county clerk and recorder, contains only one trailer space, and is served by a public water supply system and public sewage system which meet the requirements of rules for such systems adopted pursuant to Title 75, chapter 6, part 1, and which is located within the boundaries of an incorporated city or town.

(8) "Work camp" means a parcel of land on which housing is provided by a person for two or more families or individuals living separately, for the exclusive use of the employees of such person and the families, if any, of the employees. For purposes of this subsection, "housing" includes but is not limited to camping spaces; trailer parking spaces; mobile, modular, or permanent barracks or structures; and any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. "Housing" does not include shelter provided by an employer for persons who are employed to perform agricultural duties on a ranch or farm.

(9) "Youth camp" means a parcel of land on which permanent buildings, tents, or other structures are maintained as living quarters for 10 or more people and that is used primarily for educational or recreational use by minors. The term includes any appurtenant water supply and distribution system, sewage collection and disposal system, solid waste collection and disposal system, or food service and dining facilities. The term does not include any site used solely by the members and their families of a private organization that owns the site.

History: En. Sec. 212, Ch. 197, L. 1967; amd. Sec. 1, Ch. 383, L. 1973; R.C.M. 1947, 69-5601; amd. Sec. 1, Ch. 341, L. 1983.

50-52-102. Department to adopt rules. The department shall adopt rules for constructing and operating campgrounds, trailer courts, work camps, and youth camps to insure sanitation and protect public health.

History: En. Sec. 213, Ch. 197, L. 1967; amd. Sec. 2, Ch. 383, L. 1973; amd. Sec. 13, Ch. 140, L. 1977; R.C.M. 1947, 69-5602; amd. Sec. 2, Ch. 341, L. 1983.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-52-103. Duty to obtain license and permit inspections. A person operating an establishment shall:

(1) possess a current license to do so from the department. However, a campground owned by the state or a political subdivision need not obtain a license but must comply with rules applicable to it adopted by the department.

(2) permit inspections by state or local health officers, sanitarians, or other authorized persons at all reasonable times.

History: En. Sec. 214, Ch. 197, L. 1967; amd. Sec. 3, Ch. 383, L. 1973; amd. Sec. 14, Ch. 140, L. 1977; R.C.M. 1947, 69-5603; amd. Sec. 3, Ch. 341, L. 1983.

Cross-References

Discrimination in licensing prohibited, 49-3-204.

One-step licensing — inspection by other department, Title 50, ch. 8.

50-52-104. County attorney to prosecute violations. When the department furnishes evidence to the county attorney of a county in this state, the county attorney shall prosecute any person, firm, or corporation violating this chapter or a rule effective under this chapter.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(3).

Cross-References

Office of County Attorney, Title 7, ch. 4, part 7.

50-52-105. Violation of chapter a misdemeanor. (1) A person violating a provision of this chapter or a rule made under it shall be guilty of a misdemeanor and upon conviction shall be fined not less than $50 or more than $100 for the first offense and not less than $75 or more than $200 for the second offense, and for the third and subsequent offenses, he shall be punished by a fine of not less than $200 and imprisonment in the county jail not to exceed 90 days.

(2) Fines, except justice's court fines, shall be paid to the county treasurer of the county in which the establishment is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund.

History: En. Sec. 218, Ch. 197, L. 1967; amd. Sec. 6, Ch. 383, L. 1973; amd. Sec. 3, Ch. 506, L. 1975; amd. Sec. 15, Ch. 140, L. 1977; R.C.M. 1947, 69-5607; amd. Sec. 4, Ch. 341, L. 1983; amd. Sec. 35, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

50-52-106. Injunction. The department or a local board of health may petition the district court to enjoin any action in violation of this chapter or of a rule adopted by the department pursuant to this chapter.

History: En. Sec. 5, Ch. 341, L. 1983.

Cross-References
Injunctions, Title 27, ch. 19.

50-52-107. Civil penalties — injunctions not barred. (1) An establishment that violates this chapter or rules adopted by the department pursuant to this chapter is subject to a civil penalty not to exceed $500.

(2) Civil action to impose penalties, as provided under this section, does not bar injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted by the department pursuant to this chapter.

History: En. Sec. 5, Ch. 731, L. 1991.

Cross-References
Injunctions, Title 27, ch. 19.

50-52-108. Costs and expenses — recovery by department or county. In a civil action initiated by the department or county under this chapter, the court may, by petition of the department or county, order an establishment that is found in violation of this chapter or rules adopted under this chapter to pay the costs of investigations and any other expenses incurred in enforcing the provisions of this chapter.

History: En. Sec. 6, Ch. 731, L. 1991.

Part 2

Licensing

50-52-201. Application for license. (1) Application for a license is made to the department on forms containing information required by the department.

(2) The department may not issue a license unless it has been validated by the local health officer, or if there is no local health officer the sanitarian, in the county where the establishment is located.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 4, Ch. 200, L. 1979.

"Local health officer" defined, 50-2-101.

Cross-References
Licensing of sanitarians, Title 37, ch. 40.

50-52-202. License fee — late fee. (1) Each application shall be accompanied by a fee of $40.

(2) The department shall deposit 85% of the fees collected under subsection (1) into the local board inspection fund account created in 50-2-108, 11.25% of the fees into the general fund, and 3.75% of the fees collected under subsection (1) into the account provided for in 50-52-210.

(3) In addition to the license fee required under subsection (1), the department shall collect a late fee from any licensee who has failed to submit a license renewal fee prior to the expiration of his current license and who operates an establishment governed by this part in the next licensing year.

The late fee is $25 and must be deposited in the account provided for in 50-52-210.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 3, Ch. 336, L. 1983; amd. Sec. 3, Ch. 247, L. 1989; amd. Sec. 1, Ch. 731, L. 1991.

Compiler's Comments

1991 Amendment: In (1) raised fee from $30 to $40; in (2), after "collected", substituted "under subsection (1) into" for "in the state special revenue fund to the credit of", deleted subsection reference to 50-2-108, and substituted "11.25% of the fees into the general fund, and 3.75% of the fees collected under subsection (1) into the account provided for in 50-52-210" for "and the balance of the fees in the state general fund"; at end of (3) substituted "account provided for in 50-20-210" for "state general fund"; and made minor changes in style.

50-52-203. Expiration date of license. Licenses expire on December 31 of the year in which they are issued.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

50-52-204. Local board to report number of licensees to department. Before June 1 of each year, the local board of health shall submit to the department a list of the establishments in each jurisdiction which are licensed under this part.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part).

Cross-References

Local Boards of Health, Title 50, ch. 2.

50-52-205. Cancellation of license. The department may cancel a license if it finds, after proper investigation, that the licensee has violated this chapter or a rule effective under this chapter and the licensee has failed or refused to remedy or correct the violation.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).

50-52-206. Submission of plan of correction as bar to cancellation. Submission to the department of an acceptable plan of correction within 10 days after receipt from the department of written notice of violation and execution of an acceptable plan within the time prescribed in the written notice of approval of the plan by the department shall be a bar to prosecution for violation.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(part).

50-52-207. Notice and hearing required. A license may not be denied or canceled by the department without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation or the charge involved and an opportunity to answer at a hearing before the department to show cause, if any, why the license should not be denied or canceled. In this case, the licensee must make a written request to the department for a hearing within 10 days after notice of the grounds or charges has been received.

History: En. Sec. 217, Ch. 197, L. 1967; amd. Sec. 81, Ch. 349, L. 1974; amd. Sec. 2, Ch. 506, L. 1975; R.C.M. 1947, 69-5606(2).

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-52-208. Notification of and validation by local health officer. (1) A license issued by the department under this chapter is not valid until signed by the local health officer in the county where the establishment is located.

(2) The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated.

(3) Failure of the local health officer to validate the license within 15 days after its receipt is a refusal.

History: En. Sec. 5, Ch. 200, L. 1979.

Cross-References

"Local health officer" defined, 50-2-101.

50-52-209. Refusal by local health officer — appeal to board. (1) The local health officer may only refuse to validate a license issued under this chapter, upon a finding that the requirements of this chapter and any rules implementing it are not satisfied. If the local health officer refuses to validate the license, he shall notify the applicant and the department in writing stating his reasons.

(2) The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the local board of health within 30 days after receiving written notice of the local health officer's decision.

(3) The hearing before the local board of health shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act.

History: En. Sec. 6, Ch. 200, L. 1979.

Cross-References

"Local health officer" defined, 50-2-101.

50-52-210. Special revenue account. There is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under it.

History: En. Sec. 2, Ch. 731, L. 1991.

Part 3

Inspections

Part Cross-References

Sanitation in subdivisions, Title 76, ch. 4, part 1.

50-52-301. Health officers and sanitarians to make investigations and inspections. State and local health officers, sanitarians-in-training, and registered sanitarians shall make investigations and inspections of establishments and make reports to the department as required under rules adopted by the department.

History: En. Sec. 216, Ch. 197, L. 1967; amd. Sec. 5, Ch. 383, L. 1973; R.C.M. 1947, 69-5605; amd. Sec. 6, Ch. 341, L. 1983; amd. Sec. 3, Ch. 731, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of section substituted "State and" for "The department or", after "officers" inserted "sanitarians-in-training", before "sanitarians" inserted "registered", after "shall" substituted "make investigations and inspections of establishments and make reports to the department as required under rules adopted by the department" for "inspect establishments during reasonable hours as necessary"; and made minor changes in style.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Licensing of sanitarians, Title 37, ch. 40.

Sanitarian-in-training defined, 37-40-101.

"Local health officer" defined, 50-2-101.

50-52-302. Department to pay local board for inspection and enforcement. (1) Before June 30 of each year, the department shall pay to a local board of health, as established under 50-2-104, 50-2-106, or 50-2-107, an amount from the local board inspection fund account created in 50-2-108 that must be used only for the purpose of inspecting establishments licensed under this chapter and enforcing the provisions of this chapter; provided, however, that:

(a) there is a functioning local board of health; and

(b) the local board of health, local health officers, sanitarians-in-training, and registered sanitarians:

(i) assist in inspections and enforcement of the provisions of this chapter and the rules adopted under it; and

(ii) meet minimum program performance standards as established under rules adopted by the department.

(2) The funds received by the local board of health pursuant to subsection (1) must be deposited with the appropriate local fiscal authority and must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose.

(3) Funds in the local board inspection fund account not paid to the local board of health as provided in subsection (1) may be used by the department, within any jurisdiction that does not qualify to receive payments from the local board inspection fund, to enforce the provisions of this chapter and the rules adopted under it.

History: En. Sec. 215, Ch. 197, L. 1967; amd. Sec. 4, Ch. 383, L. 1973; amd. Sec. 1, Ch. 506, L. 1975; R.C.M. 1947, 69-5604(part); amd. Sec. 7, Ch. 336, L. 1983; amd. Sec. 4, Ch. 731, L. 1991.

Compiler's Comments

1991 Amendment: Near middle of (1) deleted subsection reference to 50-2-108 and after "chapter" inserted "and enforcing the provisions of this chapter"; in (1)(b) inserted "sanitarians-in-training" and before "sanitarians" inserted "registered"; in (1)(b)(i), before "enforcement", inserted "inspections and"; inserted (1)(b)(ii) providing that local board meet minimum program performance standards established under rules adopted by Department; in (2), after "health", inserted "pursuant to subsection (1)" and at end, after "and", substituted "must be used to supplement, but not supplant, other funds received by the local board of health that in the absence of funding received under subsection (1) would be made available for the same purpose" for "shall be in addition to the funds appropriated under 50-2-108 through 50-2-114"; inserted (3) authorizing funds in account not paid to local health board to be used by Department within jurisdiction not qualifying to receive payments from fund to enforce chapter and adopted rules; and made minor changes in style.

50-52-303. Health officers and sanitarians to have access to establishments. State and local health officers, sanitarians-in-training, and registered sanitarians must be provided free access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under this chapter.

History: En. Sec. 7, Ch. 731, L. 1991.

CHAPTER 53

PUBLIC SWIMMING POOLS AND SWIMMING AREAS

Part 1 — General Provisions

50-53-101. Purpose of regulation.
50-53-102. Definitions.
50-53-103. Department rules.
50-53-104. Powers of health officers — enforcement authority.
50-53-105. Publication of inspection reports.
50-53-106. Duties of pool operators.
50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required.
50-53-108. Unauthorized construction or operation a public nuisance.
50-53-109. Violation of chapter a misdemeanor.

Part 2 — Licensure of Public Swimming Pools and Bathing Places

50-53-201. License required — exemption — validation.
50-53-202. Application for and right to license.
50-53-203. License fee and late fee — disposition.
50-53-204. License expiration — nontransferability.
50-53-205 reserved.
50-53-206. Validation of license required — validation by local officer.
50-53-207. Refusal of health officer to validate — appeal to board.
50-53-208 reserved.
50-53-209. Cooperative agreements — inspections.
50-53-210 reserved.
50-53-211. Denial, suspension, or cancellation of license — multiple pool facility.
50-53-212. Administrative enforcement — notice — department hearing.
50-53-213. Compliance with corrective action plan as bar to further administrative enforcement.
50-53-214. Return of license for alteration or destruction.
50-53-215 reserved.
50-53-216. Civil penalties — other enforcement not barred.
50-53-217. Recovery of costs by department or local jurisdiction.
50-53-218. Department to pay board for inspections or enforcement, or both.

Part 1

General Provisions

Part Cross-References

Plans to bear professional seal, 18-2-122.

50-53-101. Purpose of regulation. It is the public policy of this state to regulate public swimming pools and public bathing places to protect public health and safety.

History: En. Sec. 201, Ch. 197, L. 1967; R.C.M. 1947, 69-5501; amd. Sec. 1, Ch. 646, L. 1985.

50-53-102. Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(2) "Local board of health" or "board" means a local board as defined in 50-2-101.

(3) "Local health officer" or "officer" means a local health officer as defined in 50-2-101.

(4) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state.

(5) "Public bathing place" means a body of water with bathhouses and related appurtenances operated for the public.

(6) "Public swimming pool" means an artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests; or

(b) medicinal hot water baths for individual use.

History: Ap. p. Sec. 202, Ch. 197, L. 1967; amd. Sec. 24, Ch. 187, L. 1977; Sec. 69-5502, R.C.M. 1947; (1), (2)En. Sec. 2, Ch. 197, L. 1967; amd. Sec. 28, Ch. 349, L. 1974; Sec. 69-4102, R.C.M. 1947; R.C.M. 1947, 69-4102(1), (2), 69-5502; amd. Sec. 2, Ch. 646, L. 1985; amd. Sec. 1, Ch. 708, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definitions of local board of health and local health officer. Amendment effective January 1, 1992.

50-53-103. Department rules. (1) The department shall adopt rules relating to the operation of public swimming pools and public bathing places, including rules:

(a) setting standards to ensure sanitation and safety in public swimming pools and public bathing places to protect public health and safety;

(b) relating to the licensing of operators of public swimming pools and public bathing places;

(c) providing procedures for the enforcement of the laws and rules relating to public swimming pools and public bathing places;

(d) relating to cooperative agreements between the department and local boards of health; and

(e) setting performance standards for local boards of health, local health officers, and sanitarians to meet as a condition to receipt of funds provided by the department pursuant to 50-53-218.

(2) Any rule relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings or installation of equipment in buildings is effective only when it has been adopted by the department of commerce as part of the state building code and filed with the secretary of state pursuant to 50-60-204.

History: En. Secs. 203, 204, Ch. 197, L. 1967; amd. Secs. 104, 109, Ch. 349, L. 1974; R.C.M. 1947, 69-5503, 69-5504; amd. Sec. 3, Ch. 646, L. 1985; amd. Sec. 2, Ch. 708, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in introductory clause after "rules", inserted "relating to the operation of public swimming pools and public bathing places, including rules"; and inserted (1)(b) through (1)(e) requiring rules regarding licensing of operators, enforcement procedures, cooperative agreements, and performance standards. Amendment effective April 27, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Rules for facilities at hotels and motels, 50-51-103.

50-53-104. Powers of health officers — enforcement authority. Authorized employees of the department and local boards of health may:

(1) at reasonable times inspect public swimming pools and public bathing places and otherwise conduct investigations to determine if provisions of this chapter and rules of the department have been or are being violated and make reports to the department concerning the inspections;

(2) request an injunction from the district court to enjoin actions in violation of this chapter or rules adopted by the department;

(3) bring actions to abate nuisances maintained in violation of this chapter in the manner provided by law for the summary abatement of other public nuisances;

(4) file complaints with the district court for assessment of the penalties provided for in 50-53-216 or for recovery of costs provided for in 50-53-217, or both.

History: En. Sec. 205, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5505; amd. Sec. 3, Ch. 708, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "places", inserted "and otherwise conduct investigations", after "department" inserted "have been or", and after "violated" inserted "and make reports to the department concerning the inspections"; and substituted (4) regarding filing of complaints for former (4) that read: "(4) enforce rules adopted by the department". Amendment effective January 1, 1992.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

Injunctions, Title 27, ch. 19.

Nuisances, Title 27, ch. 30.

50-53-105. Publication of inspection reports. The department may publish reports of inspections authorized by 50-53-104(1).

History: En. Sec. 206, Ch. 197, L. 1967; R.C.M. 1947, 69-5506.

50-53-106. Duties of pool operators. Each person operating a public swimming pool or public bathing place shall:

(1) operate the pool or public bathing place in a sanitary and safe manner;

(2) keep records of public health and safety information required by the department;

(3) furnish information to the department on forms prescribed by it.

History: En. Sec. 208, Ch. 197, L. 1967; R.C.M. 1947, 69-5508.

50-53-107. Pool operation to be sanitary, healthful, and safe — when lifeguard not required. (1) Public swimming pools and public bathing places, including pool structures, methods of operation, source of water supply, methods of water purification, lifesaving apparatus, safety measures for bathers, and personal cleanliness measures for bathers, shall be sanitary, healthful, and safe.

(2) A lifeguard is not required for a privately owned public swimming pool if:

(a) a sign is prominently displayed on the swimming pool premises with the words "No lifeguard is on duty" or words of substantially the same meaning; and

(b) one individual per shift is on the premises, accessible to the pool, and currently certified as competent in cardiopulmonary resuscitation by either the American red cross or the American heart association.

History: En. Sec. 209, Ch. 197, L. 1967; R.C.M. 1947, 69-5509; amd. Sec. 1, Ch. 302, L. 1983; amd. Sec. 1, Ch. 31, L. 1985.

50-53-108. Unauthorized construction or operation a public nuisance. The construction or operation of a public swimming pool or public bathing place contrary to the provisions of this chapter or rules adopted by the department under the provisions of this chapter is a public nuisance and dangerous to public health and safety.

History: En. Sec. 210, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5510; amd. Sec. 4, Ch. 646, L. 1985.

Cross-References

Public nuisance, Title 27, ch. 30, part 2.

Local Boards of Health — power to abate nuisances, 50-2-116.

50-53-109. Violation of chapter a misdemeanor. A person who violates this chapter or rules adopted by the department under the provisions of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than $25 or more than $500, imprisonment for not more than 6 months, or both. Each day that a violation continues is a separate violation.

History: En. Sec. 211, Ch. 197, L. 1967; amd. Sec. 107, Ch. 349, L. 1974; R.C.M. 1947, 69-5511.

Part 2

Licensure of Public Swimming Pools and Bathing Places

Part Compiler's Comments

Effective Date: Section 20(2), Ch. 708, L. 1991, provided that this part, except for 50-53-203, is effective January 1, 1992.

50-53-201. *(Effective January 1, 1992)* **License required — exemption — validation.** (1) Except as provided in subsection (3), a person may not operate a public swimming pool or public bathing place without annually obtaining a license from the department.

(2) A separate license is required for each public swimming pool or public bathing place unless more than one public swimming pool is operated on the same premises by the same person, in which case a single license is required for all public swimming pools on the premises.

(3) The state or a political subdivision of the state owning or operating a public swimming pool or public bathing place is not required to obtain a license under subsection (1) but must comply with the health and safety requirements in 50-53-101 through 50-53-109 and this part and the rules of the department.

(4) A license issued by the department is not valid unless signed in accordance with 50-53-206 or in accordance with 50-53-207, in the case of an appeal.

History: En. Sec. 4, Ch. 708, L. 1991.

50-53-202. *(Effective January 1, 1992)* **Application for and right to license.** (1) An application for both an original and renewal license to operate a public swimming pool or public bathing place must be made to the department, must contain the information required by the department, and must be accompanied by the fee provided for in 50-53-203.

(2) A license must be issued to an applicant who has satisfied the requirements for a license provided in 50-53-101 through 50-53-109, this part, and department rules.

(3) Upon issuing a license, the department shall forward the license to the appropriate local health officer for validation as provided in 50-53-206.

History: En. Sec. 5, Ch. 708, L. 1991.

50-53-203. License fee and late fee — disposition. (1) (a) Except as provided in subsection (1)(b), each application for an original or renewal license must be accompanied by a license fee of $75.

(b) The fee for an original or renewal license for a public swimming pool or public bathing place operated in conjunction with a public accommodation is $50.

(2) An operator of a public swimming pool or public bathing place who fails to renew a license by the expiration date provided in 50-53-204 and who operates the public swimming pool or public bathing place in the license year for which no renewal fee was paid shall, upon renewal, pay to the department

a late renewal fee of $25 in addition to the renewal fee required by subsection (1). Payment of the late renewal fee does not relieve the operator of responsibility for any operation without a license.

(3) The department shall deposit 85% of the fees collected under subsection (1) in the state special revenue fund to the credit of the local board inspection fund account created by 50-2-108. Money deposited in the local board inspection fund account is subject to appropriation by the legislature for the purposes of 50-53-218.

(4) The department shall deposit 15% of the fees collected under subsection (1) and all the fees collected under subsection (2) in an account in the state special revenue fund to be appropriated by the legislature to the department for the enforcement of 50-53-101 through 50-53-109 and this part.

History: En. Sec. 6, Ch. 708, L. 1991.

Compiler's Comments

Effective Date: Section 20(1), Ch. 708, L. 1991, provided that this section is effective on passage and approval. Approved April 27, 1991.

50-53-204. *(Effective January 1, 1992)* **License expiration — nontransferability.** (1) A license issued under 50-53-101 through 50-53-109 and this part expires on December 31 of the year of issuance unless it is suspended or canceled by the department before that date.

(2) A license issued under 50-53-101 through 50-53-109 and this part is not transferable.

History: En. Sec. 9, Ch. 708, L. 1991.

50-53-205 reserved.

50-53-206. *(Effective January 1, 1992)* **Validation of license required — validation by local officer.** (1) A license issued by the department under 50-53-101 through 50-53-109 and this part is not valid until it is signed by the local health officer of the jurisdiction in which the public swimming pool or public bathing place is located.

(2) The local health officer shall, within 15 days of receipt of the license, validate or refuse to validate the license. Failure of the officer to validate a license is a refusal for the purposes of 50-53-207.

History: En. Sec. 7, Ch. 708, L. 1991.

50-53-207. *(Effective January 1, 1992)* **Refusal of health officer to validate — appeal to board.** (1) A local health officer may refuse to validate a license issued by the department under 50-53-101 through 50-53-109 and this part only if the officer determines that the license applicant has not met the requirements for the issuance of a license under 50-53-101 through 50-53-109, this part, and the rules of the department. If the local health officer refuses to validate a license, the officer shall notify the license applicant and the department of the refusal within 5 days of his decision. The notice must state the grounds for the refusal.

(2) The license applicant may appeal the decision of the local health officer to the local board of health by filing a written notice of appeal with the officer and the board within 30 days of the officer's refusal or within 30 days of the expiration of the period for the officer's decision under 50-53-206, whichever is first.

(3) Upon filing the notice of appeal, the license applicant is entitled to a hearing before the board to determine the applicant's eligibility for a license under 50-53-101 through 50-53-109, this part, and the rules of the department. The hearing must be held pursuant to the contested case procedure of the Montana Administrative Procedure Act. If the board finds that the applicant is entitled to a validated license, the chairman of the board shall validate the license by signing the license.

History: En. Sec. 8, Ch. 708, L. 1991.

50-53-208 reserved.

50-53-209. *(Effective January 1, 1992)* **Cooperative agreements — inspections.** (1) The department may enter into cooperative agreements with local boards of health to authorize those boards to act as agents of the department and to conduct inspections of and enforce applicable statutes and department rules relating to public swimming pools and public bathing places within the jurisdictions of the respective boards.

(2) The department or a local board of health, pursuant to a cooperative agreement, shall annually conduct:

(a) at least one full facility inspection and one critical point inspection of each public swimming pool or public bathing place operated throughout the year; and

(b) at least one full facility inspection of each seasonal public swimming pool or public bathing place.

History: En. Sec. 10, Ch. 708, L. 1991.

50-53-210 reserved.

50-53-211. *(Effective January 1, 1992)* **Denial, suspension, or cancellation of license — multiple pool facility.** (1) The department may deny, suspend, or cancel a license if it finds that the license applicant or licensee has violated 50-53-101 through 50-53-109, this part, or the rules of the department and has failed or refused to remedy or correct the violation in accordance with the procedure provided in 50-53-213.

(2) If the license of an operator who operates more than one public swimming pool under one license is denied, suspended, or canceled, the use of all of the public swimming pools on the premises must cease unless the department determines that the violation for which the license was denied, suspended, or canceled does not affect the operation or the use of all of the public swimming pools on the premises.

History: En. Sec. 11, Ch. 708, L. 1991.

50-53-212. *(Effective January 1, 1992)* **Administrative enforcement — notice — department hearing.** (1) A license may not be denied, suspended, or canceled or corrective action may not be ordered by the department unless the department delivers to the license applicant or licensee a written notice of violation that contains a written statement of the facts constituting the violation and a citation to the statute or rule of the department alleged to have been violated. No further administrative enforcement action may be taken by the department pursuant to the notice if within 10 days after receipt of the notice, the license applicant or licensee complies with the provisions of 50-53-213.

(2) The department may combine with any notice issued under subsection (1) an order for the suspension or cancellation of a license or for corrective action as the department finds necessary to remedy the violation evidenced in the notice. The order becomes final 10 days after service unless within that time the license applicant or licensee requests a hearing pursuant to subsection (4) or submits a corrective action plan in accordance with 50-53-213.

(3) The department may combine with any notice or order issued under subsection (1) or (2) an order for the license applicant or licensee to appear before the department within a time specified by the department and show cause why the department should not deny, suspend, or cancel the license or otherwise order compliance with 50-53-101 through 50-53-109, this part, and the rules of the department.

(4) A hearing request by a license applicant or licensee must be made in writing to the department and must specify the mistake in the facts or law relied on by the department. A hearing held pursuant to this section must be held in accordance with the contested case procedure of the Montana Administrative Procedure Act. Following a hearing, the department may issue an appropriate order. Service of notice or an order mailed by the department is complete upon mailing.

History: En. Sec. 12, Ch. 708, L. 1991.

50-53-213. *(Effective January 1, 1992)* **Compliance with corrective action plan as bar to further administrative enforcement.** The department may not deny, suspend, or cancel the license or require corrective action of an operator of a public swimming pool or public bathing place who received a notice of violation from the department pursuant to 50-53-212 if:

(1) the operator submits a plan to correct the violation to the department within 10 days of service of the notice;

(2) the department approves the plan in writing, including the time in which the plan must be complied with; and

(3) the operator complies with the plan within the time period prescribed by the department.

History: En. Sec. 13, Ch. 708, L. 1991.

50-53-214. *(Effective January 1, 1992)* **Return of license for alteration or destruction.** Upon cancellation of a license or the right to operate one or more public swimming pools under a single license for the premises, the operator of the public swimming pool shall return the license to the department for destruction of the license or deletion of the listing of the public swimming pool affected by the cancellation. Cancellation by the department of a license to operate a public swimming pool is effective notwithstanding the refusal or failure of an operator to return the license to the department.

History: En. Sec. 14, Ch. 708, L. 1991.

50-53-215 reserved.

50-53-216. *(Effective January 1, 1992)* **Civil penalties — other enforcement not barred.** (1) A person who violates a provision of 50-53-101 through 50-53-109 and this part, the rules of the department implementing those sections, an order of the department, or any condition of a license issued by the department is subject to a civil penalty not to exceed $500 for each violation.

(2) An action for collection of a civil penalty under this section does not bar administrative enforcement under 50-53-212, an action for injunctive relief under 50-53-104, or enforcement under 50-53-109.

History: En. Sec. 15, Ch. 708, L. 1991.

50-53-217. *(Effective January 1, 1992)* **Recovery of costs by department or local jurisdiction.** In a civil or criminal action brought by the department or a local jurisdiction to enforce the requirements of 50-53-101 through 50-53-109 and this part, the rules of the department, or any condition of a license or to assess civil penalties and in an action brought by the department to enforce an order of the department, the court may, in the case of an intentional violation of 50-53-101 through 50-53-109 and this part, assess the operator of the public swimming pool or public bathing facility for the costs of any investigation and the costs of the civil or criminal action, including reasonable attorney fees.

History: En. Sec. 16, Ch. 708, L. 1991.

50-53-218. *(Effective January 1, 1992)* **Department to pay board for inspections or enforcement, or both.** (1) By June 30 of each year, the department shall pay to a local board of health established under 50-2-104, 50-2-106, or 50-2-107 an amount from the local board inspection fund account, created by 50-2-108, for the purpose of inspecting public swimming pools and public bathing places licensed under 50-53-101 through 50-53-109 and this part or for taking appropriate enforcement action with respect to the public swimming pools and public bathing places, or for both inspection and enforcement. The payment required by this section must be made to a board only if the board and any local health officer and sanitarian for the jurisdiction of the board meet the program performance standards established by department rules.

(2) Money received by the board pursuant to subsection (1) may be used only for the purpose of inspections and enforcement under 50-53-101 through 50-53-109 and this part and must be used to supplement and not supplant other money received by the board for the same purpose.

(3) The department may use money in the local board inspection fund account appropriated to the department for the enforcement of 50-53-101 through 50-53-109, this part, and the rules of the department and for inspections to determine compliance with those sections and rules in any local jurisdiction not receiving payment under subsection (1).

History: En. Sec. 17, Ch. 708, L. 1991.

CHAPTERS 54 THROUGH 59

RESERVED

CHAPTER 60

BUILDING CONSTRUCTION STANDARDS

Part 1 — General Provisions

50-60-101. Definitions.
50-60-102. Applicability.
50-60-103. Administration by department.
50-60-104. Inspection fees.
50-60-105. Hearings authorized.
50-60-106. Powers and duties of municipalities.
50-60-107. Certificate of occupancy.
50-60-108. Construction permit required.
50-60-109. Injunctions authorized.
50-60-110. Violation a misdemeanor.

Part 2 — State Building Code

50-60-201. Purpose of state building code.
50-60-202. Department to be sole state agency to promulgate building regulations — exception.
50-60-203. Department to adopt state building code by rule.
50-60-204. Public hearing required — effective date of certain rules.
50-60-205. When state building code applies — health care facility doors.
50-60-206. Variances to state building code.

Part 3 — Municipal and County Building Codes

50-60-301. Municipal and county building codes authorized — health care facility doors.
50-60-302. Certification of municipal and county building codes.
50-60-303. Municipal appeal procedure.

Part 4 — Factory-Built Buildings and Recreational Vehicles

50-60-401. Department to adopt rules for factory-built buildings and recreational vehicles.
50-60-402. Factory-built buildings and recreational vehicles to comply with standards.
50-60-403. Use of independent testing laboratories authorized.
50-60-404. Enforcement of building construction standards for modular homes.

Part 5 — Plumbing Installations

50-60-501. Declaration of public interest.
50-60-502. No penalties for hiring unlicensed plumbers.
50-60-503. Exceptions.
50-60-504. Department to prescribe minimum standards.
50-60-505. Permit required.
50-60-506. Exceptions to permit requirement.
50-60-507. Application for and issuance of permit.
50-60-508. Permit fees.
50-60-509. Person commencing work without a permit to pay double the permit fee — exception.
50-60-510. Inspection by department to insure compliance.
50-60-511. Duty of permittee regarding inspection and compliance.
50-60-512. Department authorized to order work stopped for noncompliance.
50-60-513. Suspension or revocation of permit.
50-60-514. District court — jurisdiction — restraining orders.
50-60-515. Penalty for violations — exceptions.

Part 6 — Electrical Installations

50-60-601. Purpose.
50-60-602. Exceptions.

50-60-603. Electrical installations to comply with building codes adopted by department.
50-60-604. Department to make inspections, issue inspection tags, and establish fees.
50-60-605. Power supplier not to energize installation without inspection tag.
50-60-606. Power supplier to deliver inspection tag to department after installation energized.
50-60-607. Unlawful acts.

Part 7 — Elevators

50-60-701. Inspection of passenger elevators and escalators — fees.
50-60-702. Department to adopt inspection standards — certification of inspectors.
50-60-703. When inspection of elevators not necessary.

Chapter Cross-References

Tramway construction standards, 23-2-721.

Part 1

General Provisions

Part Cross-References

Construction requirements for mausoleums, columbariums, and crematories, 35-21-708 through 35-21-712.

50-60-101. Definitions. As used in parts 1 through 4 and part 7 of this chapter, unless the context requires otherwise, the following definitions apply:

(1) “Building” means a combination of any materials, whether mobile, portable, or fixed, to form a structure and the related facilities for the use or occupancy by persons or property. The word “building” shall be construed as though followed by the words “or part or parts thereof”.

(2) “Building regulations” means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair, inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) “Construction” means the original construction and equipment of buildings and requirements or standards relating to or affecting materials used, including provisions for safety and sanitary conditions.

(4) “Department” means the department of commerce provided for in Title 2, chapter 15, part 18.

(5) “Equipment” means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumbwaiters, escalators, and other mechanical additions or installations.

(6) "Factory-built building" means a factory-assembled structure or structures equipped with the necessary service connections but not made so as to be readily movable as a unit or units and designed to be used with a permanent foundation. "Factory-built building" does not include manufactured housing constructed after June 15, 1976, under the HUD, National Mobile Home Construction and Safety Act of 1974.

(7) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates, and similar documents prescribed or required by state or local building regulations.

(8) "Local legislative body" means the council or commission charged with governing the municipality.

(9) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (10) of this section.

(10) (a) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality.

(b) Upon request, the department may approve extension of the jurisdictional area to include:

(i) all or part of the area within 4 ½ miles of the corporate limits of a municipality;

(ii) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and

(iii) all of any zoning district adopted pursuant to Title 76, chapter 2, part 1 or 2, which is partially within 4 ½ miles of the corporate limits of a municipality.

(c) Distances shall be measured in a straight line in a horizontal plane.

(11) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a building.

(12) "Recreational vehicle" means a vehicular type unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own mode of power or is mounted on or towed by another vehicle, including but not limited to a:

(a) travel trailer;

(b) camping trailer;

(c) truck camper; or

(d) motor home.

(13) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(14) "State building code" means the state building code provided for in 50-60-203 or any portion of the code of limited application and any of its modifications or amendments.

History: En. Sec. 2, Ch. 366, L. 1969; amd. Sec. 1, Ch. 226, L. 1974; amd. Sec. 1, Ch. 244, L. 1975; amd. Sec. 1, Ch. 459, L. 1975; amd. Sec. 1, Ch. 504, L. 1977; R.C.M. 1947, 69-2105; amd. Sec. 1, Ch. 315, L. 1979; amd. Sec. 1, Ch. 555, L. 1981; amd. Sec. 1, Ch. 33, L. 1985; amd. Sec. 8, Ch. 140, L. 1985; amd. Sec. 4, Ch. 352, L. 1985.

50-60-102. Applicability. (1) The state building codes do not apply to:

(a) residential buildings containing less than five dwelling units or their attached-to structures, any farm or ranch building, and any private garage or private storage structure used only for the owner's own use, located within the municipality's or county's jurisdictional area, unless the local legislative body or board of county commissioners by ordinance or resolution makes the state building code applicable to these structures; or

(b) mines and buildings on mine property regulated under Title 82, chapter 4, and subject to inspection under the Federal Mine Safety and Health Act.

(2) The state may not enforce the state building code under 50-60-205 for the buildings referred to in subsection (1). Local governments that have made the state building codes applicable to the aforementioned buildings may enforce within their jurisdictional areas the state building code as adopted by the respective local government.

(3) Where good and sufficient cause exists, a written request for limitation of the state building code may be filed with the department for filing as a permanent record.

(4) The department may limit the application of any rule or portion of the state building code to include or exclude:

(a) specified classes or types of buildings according to use or other distinctions as may make differentiation or separate classification or regulation necessary, proper, or desirable;

(b) specified areas of the state based upon size, population density, special conditions prevailing therein, or other factors which make differentiation or separate classification or regulation necessary, proper, or desirable.

History: En. Sec. 4, Ch. 366, L. 1969; amd. Sec. 2, Ch. 226, L. 1974; R.C.M. 1947, 69-2107; amd. Sec. 2, Ch. 555, L. 1981; amd. Sec. 1, Ch. 194, L. 1987; amd. Sec. 60, Ch. 83, L. 1989.

Cross-References

Municipal power to regulate, restrain, or prevent dangerous factories, 7-33-4207.

50-60-103. Administration by department. The department shall administer parts 1 through 4 and for that purpose shall:

(1) issue orders necessary to effectuate the purposes of parts 1 through 4 and enforce the orders by all appropriate administrative and judicial proceedings;

(2) enter, inspect, and examine buildings or premises necessary for the proper performance of its duties under parts 1 through 4;

(3) study the operation of the state building code, local building regulations, and other laws related to the construction of buildings to ascertain their effects upon the cost of building construction and the effectiveness of their provisions for health and safety;

(4) recommend tests or require the testing and approval of materials, devices, and methods of construction to ascertain their acceptability under the requirements of the state building code and issue certification of such acceptability;

(5) appoint experts, consultants, and technical advisers for assistance and recommendations relative to the formulation and adoption of the state building code;

(6) advise, consult, and cooperate with other agencies of the state, local governments, industries, and interested persons or groups.

History: En. Sec. 6, Ch. 366, L. 1969; amd. Sec. 3, Ch. 226, L. 1974; R.C.M. 1947, 69-2109.

50-60-104. Inspection fees. The department shall establish a schedule of fees and may collect fees for the inspection of plans and specifications and for the inspection of buildings, factory-built buildings, recreational vehicles, tramways, or any other facility or structure.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part).

Cross-References

Inspection of passenger tramways, Title 23, ch. 2, part 7.

50-60-105. Hearings authorized. The department may hold hearings relating to the administration of parts 1 through 4 in accordance with the Montana Administrative Procedure Act.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(2).

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-60-106. Powers and duties of municipalities. (1) The examination, approval, or disapproval of plans and specifications, the issuance and revocation of building permits, licenses, certificates, and similar documents, the inspection of buildings, and the administration and enforcement of building regulations within the municipal jurisdictional area shall be the responsibility of the municipalities of the state.

(2) Each municipality may:

(a) examine, approve, or disapprove plans and specifications for the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state or municipal building code, and direct the inspection of the buildings during and in the course of construction;

(b) require that construction of buildings be in accordance with the applicable provisions of the state or municipal building code, subject to the powers of variance or modification granted to the department;

(c) order in writing the remedying of any condition found to exist in, on, or about any building in violation of the state or municipal building code; orders may be served upon the owner or his authorized agent personally or by sending by registered or certified mail a copy of the order to the owner or his authorized agent at the address set forth in the application for permission for the construction of the building; any local building department, by action of an authorized officer, may grant in writing such time as may be reasonably necessary for achieving compliance with the order;

(d) issue certificates of occupancy, permits, licenses, and such other documents in connection with the construction of the buildings as required;

(e) make, amend, and repeal rules for the administration and enforcement of the provisions of this section and for the collection of reasonable fees, which shall be comparable to fees imposed or prescribed by existing local building regulations;

(f) prohibit the commencement of construction until a permit has been issued by the local building department after a showing of compliance with the requirements of the applicable provisions of the state or municipal building code.

History: En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part).

Cross-References

General powers of local government, Art. XI, sec. 4, Mont. Const.

Enforcement of building construction standards for modular homes, 50-60-404.

50-60-107. Certificate of occupancy. (1) A certificate of occupancy for a building constructed in accordance with the provisions of the state or municipal building code shall certify that the building conforms to the requirements of the building regulations applicable to it.

(2) Every certificate of occupancy, unless and until set aside or vacated by a court of competent jurisdiction, is binding and conclusive upon all municipal agencies as to all matters set forth, and no order, directive, or requirement at variance therewith may be made or issued by any other state or municipal agency.

History: En. Sec. 14, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2117(part).

50-60-108. Construction permit required. Any person who desires to construct a building which is subject to the provisions of parts 1 through 4 must apply for a permit from the appropriate authorities.

History: En. Sec. 10, Ch. 366, L. 1969; amd. Sec. 6, Ch. 226, L. 1974; R.C.M. 1947, 69-2113.

50-60-109. Injunctions authorized. (1) The construction or use of the building in violation of any provision of the state or municipal building code or any lawful order of a state building official or a local building department may be enjoined by a judge of the district court in the judicial district in which the building is located.

(2) This section will be governed by the Montana Rules of Civil Procedure.

History: En. Sec. 15, Ch. 366, L. 1969; R.C.M. 1947, 69-2118.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

Injunctions — procedure, Title 27, ch. 19.

50-60-110. Violation a misdemeanor. Any person served with an order pursuant to the provisions of parts 1 through 4 who fails to comply with the order not later than 30 days after service or within the time fixed by the department or a local building department for compliance, whichever is the greater, or any owner, builder, architect, tenant, contractor, subcontractor, construction superintendent, their agents, or any person taking part or assisting in the construction or use of any building who knowingly violates any of the applicable provisions of the state building code or a municipal building code is guilty of a misdemeanor.

History: En. Sec. 16, Ch. 366, L. 1969; amd. Sec. 8, Ch. 226, L. 1974; R.C.M. 1947, 69-2119.

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

Part 2

State Building Code

Part Cross-References

Municipal adoption of building, electrical, and plumbing codes, 7-15-4121.

Municipal adoption of fire code, 7-33-4208.

Seal of professional engineer, professional land surveyor, or architect required, 18-2-122.

Department of Commerce approval of school building plans required prior to construction or alteration, 20-6-622.

Construction requirements for mausoleums, columbariums, and crematories, 35-21-708 through 35-21-712.

Municipal building regulations — municipal zoning commission, Title 76, ch. 2, part 3.

50-60-201. Purpose of state building code. The state building code shall be designed to effectuate the general purposes of parts 1 through 4 and the following specific objectives and standards to:

(1) provide reasonably uniform standards and requirements for construction and construction materials consonant with accepted standards of design, engineering, and fire prevention practices;

(2) permit to the fullest extent feasible the use of modern technical methods, devices, and improvements which tend to reduce the cost of construction consistent with reasonable requirements for the health and safety of the occupants or users of buildings and, consistent with the conservation of energy, by design requirements and criteria that will result in the efficient utilization of energy, whether used directly or in a refined form, in buildings;

(3) eliminate restrictive, obsolete, conflicting, and unnecessary building regulations and requirements which tend to increase unnecessarily construction costs, retard unnecessarily the use of proven new materials which have been found adequate through experience or testing, or provide unwarranted preferential treatment to types or classes of materials, products, or methods of construction;

(4) ensure that any new buildings constructed with public funds are accessible to and functional for physically handicapped persons according to the principles applicable to accessibility to public buildings for handicapped persons adopted, recommended, or issued as Part II, Uniform Federal Accessibility Standards, as it reads in the Federal Register dated August 7, 1984, and as the department may amend by rule to reflect changes in the principles;

(5) encourage efficiencies of design and insulation which enable buildings to be heated in the winter with the least possible quantities of energy and to be kept cool in the summer without air conditioning equipment or with the least possible use of such equipment;

(6) encourage efficiencies and criteria directed toward design of building envelopes with high thermal resistance and low air leakage and toward requiring practices in the design and selection of mechanical, electrical, and illumination systems which promote the efficient use of energy.

History: En. Sec. 7, Ch. 366, L. 1969; amd. Sec. 4, Ch. 226, L. 1974; amd. Sec. 1, Ch. 116, L. 1975; R.C.M. 1947, 69-2110; amd. Sec. 1, Ch. 65, L. 1985.

50-60-202. Department to be sole state agency to promulgate building regulations — exception. No state agency except the department may promulgate building regulations as defined in 50-60-101, except the department of justice may promulgate regulations relating to use of buildings and installation of equipment. The state fire prevention and investigation program of the department of justice shall review building plans and regulations for conformity with rules promulgated by the department.

History: En. 69-2125 by Sec. 13, Ch. 504, L. 1977; R.C.M. 1947, 69-2125; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-203. Department to adopt state building code by rule. (1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in all buildings or classes of buildings, including provisions dealing with safety, sanitation, and conservation of energy. The department may amend or repeal such rules.

(2) The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such codes.

(3) The rules, when adopted as provided in parts 1 through 4, constitute the "state building code" and are acceptable for the buildings to which they are applicable.

(4) The department shall adopt rules that permit the installation of below-grade liquefied petroleum gas-burning appliances in single-family dwellings.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part); amd. Sec. 1, Ch. 350, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (4) concerning rules permitting installation of below-grade liquefied petroleum gas-burning appliances.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-204. Public hearing required — effective date of certain rules. (1) Except as provided in subsection (2) of this section, no rule, amendment, or repeal of the state building code may take effect until after a public hearing by the department.

(2) If a hearing has been held by the department of justice with respect to the duties contained in chapter 3 of this title or by the board of plumbers, the department of health and environmental sciences, or the state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

History: En. Sec. 8, Ch. 366, L. 1969; amd. Sec. 5, Ch. 226, L. 1974; amd. Sec. 2, Ch. 116, L. 1975; amd. Sec. 17, Ch. 504, L. 1975; amd. Sec. 1, Ch. 173, L. 1977; amd. Sec. 16, Ch. 187, L. 1977; amd. Sec. 2, Ch. 504, L. 1977; R.C.M. 1947, 69-2111(part); amd. Sec. 17, Ch. 546, L. 1979; amd. Sec. 173, Ch. 575, L. 1981; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

Department of Health and Environmental Sciences, Title 2, ch. 15, part 21.

State Electrical Board, Title 37, ch. 68, part 2.

Board of Plumbers, Title 37, ch. 69, part 2.

State fire prevention and investigation program, Title 50, ch. 3.

50-60-205. When state building code applies — health care facility doors. (1) If a municipality or county does not adopt a building code as provided in 50-60-301, the state building code applies within the municipal or county jurisdictional area and the state will enforce the code in these areas.

(2) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(2); amd. Sec. 1, Ch. 168, L. 1983.

50-60-206. Variances to state building code. (1) The department has the power, on satisfactory proof after a public hearing, to:

(a) vary or modify, in whole or part, the application of any provision or requirement of the state building code if strict compliance would cause any undue hardship; but no variance or modification shall affect adversely provisions for health, safety, and security, and equally safe and proper alternatives may be prescribed therefor;

(b) reverse, modify, or annul, in whole or part, any ruling, direction, determination, or order of any state agency affecting or relating to the construction of any building, the construction of which is pursuant or purports to be pursuant to the provisions of the state building code;

(c) review within 30 days after disapproval any application for permission for the construction of a building pursuant to the provisions of the state building code or plans or specifications submitted in connection therewith;

(d) reverse, modify, or annul the disapproval in whole or part;

(e) within 30 days make a determination that the application or plans or specifications are in compliance with the provisions of the state building code. If this determination is made, the officer charged with the duty shall issue any permit, license, certificate, authorization, or other document required for the construction.

(2) An application for a variance, modification, reversal, annulment, or review may be made by any person aggrieved pursuant to the Montana Administrative Procedure Act.

(3) An application for a variance, modification, reversal, annulment, or review shall stay all proceedings in furtherance of the action appealed from unless there is a showing by the state agency that a stay would involve imminent peril to life or property.

(4) The department, in hearings conducted under this section, shall not be bound by common-law or statutory rules of evidence.

History: En. Sec. 11, Ch. 366, L. 1969; amd. Sec. 7, Ch. 226, L. 1974; R.C.M. 1947, 69-2114.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

Part 3

Municipal and County Building Codes

Part Cross-References

Municipal adoption of building, electrical, and plumbing codes, 7-15-4121.

Municipal powers relating to fire escapes and safety exits, 7-15-4124.

Municipal adoption of fire code, 7-33-4208.

Seal of professional engineer, professional land surveyor, or architect required, 18-2-122.

Construction requirements for mausoleums, columbariums, and crematories, 35-21-708 through 35-21-712.

Municipal building regulations — municipal zoning commission, Title 76, ch. 2, part 3.

50-60-301. Municipal and county building codes authorized — health care facility doors. (1) The local legislative body of a municipality or county may adopt a building code by ordinance to apply to the municipal or county jurisdictional area.

(2) A municipal or county building code may include only codes adopted by the department.

(3) Any provision of a building code requiring the installation or maintenance of self-closing or automatic closing corridor doors to patient rooms does not apply to health care facilities as defined in 50-5-101.

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(1); (3) En. Sec. 1, Ch. 168, L. 1983.

Cross-References

General powers of local government, Art. XI, sec. 4, Mont. Const.

Applicability of state building code, 50-60-205.

50-60-302. Certification of municipal and county building codes. (1) A county or municipality may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with the department.

(2) The department shall set forth rules and standards governing the certification of municipal and county building code programs as required in subsection (1).

History: En. Sec. 9, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 3, Ch. 504, L. 1977; R.C.M. 1947, 69-2112(3), (4).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-303. Municipal appeal procedure. (1) If a municipality adopts a municipal building code, it shall also establish an appeal procedure by ordinance which is acceptable to the department.

(2) If a municipality does not adopt a code, appeals on the application of the state building code within the municipal jurisdictional area shall be made to the department.

History: En. Sec. 13, Ch. 366, L. 1969; amd. Sec. 11, Ch. 226, L. 1974; R.C.M. 1947, 69-2116.

Cross-References

Montana Administrative Procedure Act — contested cases, Title 2, ch. 4, part 6.

Part 4

Factory-Built Buildings and Recreational Vehicles

50-60-401. Department to adopt rules for factory-built buildings and recreational vehicles. The department may adopt by reference nationally recognized construction standards, in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such standards, for the construction of factory-built buildings and recreational vehicles as defined in 50-60-101.

History: En. Sec. 2, Ch. 348, L. 1971; amd. Sec. 9, Ch. 226, L. 1974; R.C.M. 1947, 69-2122; amd. Sec. 2, Ch. 33, L. 1985.

Cross-References

Adoption of rule by reference, 2-4-307.

50-60-402. Factory-built buildings and recreational vehicles to comply with standards. (1) No person, firm, or corporation may manufacture, sell, or offer for sale any new factory-built building or recreational vehicle unless such factory-built building or recreational vehicle, its components, systems, and appliances have been constructed and assembled in accordance with the standards herein defined.

(2) Any factory-built building or recreational vehicle unit which has been approved by the department shall be deemed to be in full compliance with the standards and rules prescribed in parts 1 through 4.

(3) All factory-built buildings or recreational vehicle units thus approved shall be acceptable as meeting the requirements of parts 1 through 4 throughout the state of Montana without further inspection or fees except for zoning, utility connections, and foundation permits required by local ordinance.

History: En. Sec. 3, Ch. 348, L. 1971; amd. Sec. 10, Ch. 226, L. 1974; amd. Sec. 2, Ch. 459, L. 1975; R.C.M. 1947, 69-2123; amd. Sec. 3, Ch. 33, L. 1985.

50-60-403. Use of independent testing laboratories authorized. The department may utilize independent testing laboratories or the agencies of other states to determine if approved models of factory-built buildings or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models.

History: En. Sec. 4, Ch. 348, L. 1971; amd. Sec. 11, Ch. 226, L. 1974; amd. Sec. 4, Ch. 504, L. 1977; R.C.M. 1947, 69-2124(part).

50-60-404. Enforcement of building construction standards for modular homes. (1) The provisions of this chapter apply to factory-built modular or prebuilt homes or buildings.

(2) A municipality may regulate the construction of factory-built modular or prebuilt homes or buildings as provided in 50-60-106 if:

(a) the homes or buildings are constructed inside the jurisdiction of the municipality;

(b) the homes or buildings are sold primarily to persons in the county in which the factory is located;

(c) the factory does not manufacture more than 100 homes or buildings a year; and

(d) the municipality has an agency or officer assigned to inspect and enforce building construction standards.

(3) Inspection and enforcement approval given by a municipality under this section may be recognized and accepted by any other municipality of the state to which the factory-built home or building is transported for final installation. Additional inspections need not be conducted.

History: En. Sec. 1, Ch. 440, L. 1979.

Cross-References

General powers of local government, Art. XI, sec. 4, Mont. Const.

Part 5

Plumbing Installations

Part Cross-References

Plumber licensing, Title 37, ch. 69, part 3.

50-60-501. Declaration of public interest. It is hereby declared that the public health and welfare require that minimum standards for the planning, installing, altering, extending, repairing, and maintaining of plumbing systems be established for the protection of the people of the state.

History: En. Sec. 1, Ch. 251, L. 1959; R.C.M. 1947, 66-2412.

50-60-502. No penalties for hiring unlicensed plumbers. This part shall not be construed as imposing any penalty on any person for hiring or contracting with an unlicensed person to do work in the field of plumbing. However, any person who shall himself engage in the field of plumbing at a time when he is not duly licensed shall be subject to the penalties imposed by this part and Title 37, chapter 69.

History: En. Sec. 4, Ch. 251, L. 1959; amd. Sec. 8, Ch. 497, L. 1975; R.C.M. 1947, 66-2415.

50-60-503. Exceptions. This part shall not be construed to apply to or to affect plumbing installations in any mines, mills, smelters, refineries, public utilities, railroads, or plumbing installations on farms having their own individual water supply or sewage disposal system.

History: En. Sec. 15, Ch. 251, L. 1959; amd. Sec. 1, Ch. 44, L. 1973; amd. Sec. 12, Ch. 497, L. 1975; R.C.M. 1947, 66-2426.

50-60-504. Department to prescribe minimum standards. The department of commerce shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all plumbing installations or maintenance, except where exempt by 50-60-503.

History: En. Sec. 5, Ch. 251, L. 1959; amd. Sec. 18, Ch. 366, L. 1969; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 236, Ch. 350, L. 1974; amd. Sec. 9, Ch. 497, L. 1975; amd. Sec. 5, Ch. 504, L. 1977; R.C.M. 1947, 66-2416; amd. Sec. 5, Ch. 352, L. 1985.

Cross-References

Department of Commerce, Title 2, ch. 15, part 18.

50-60-505. Permit required. (1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the department of commerce.

(2) A separate permit shall be obtained for each building or structure.

(3) No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(4) When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal

facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part); amd. Sec. 6, Ch. 352, L. 1985.

50-60-506. Exceptions to permit requirement. (1) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety.

(2) No permit is required where the installation is exempt under the provisions of 37-69-102 or 50-60-503.

(3) No state permit is required whenever the installation occurs in an area governed by a municipality and where there is in effect a municipal building code which covers plumbing installations and which provides inspection procedures.

(4) Nothing contained in this part shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work himself.

(5) The provisions of this part do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this part.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(2).

50-60-507. Application for and issuance of permit. (1) A person required to apply for a permit shall make application on forms provided by the department of commerce or its authorized representative. He shall give a description of the character of the work proposed to be done and the location, ownership, occupancy, and use of the premises in connection therewith.

(2) The department or its authorized representative may require sketches, specifications, or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.

(3) If the department determines that the sketches, specifications, drawings, descriptions, and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the department.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(3); amd. Sec. 7, Ch. 352, L. 1985.

50-60-508. Permit fees. (1) The department of commerce shall establish permit fees in accordance with the Montana Administrative Procedure Act and the fees shall be deposited to the state special revenue fund of the department for use in the administration and enforcement of this part and the Montana state plumbing code.

(2) For the purpose of 50-60-505 through 50-60-513, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing

systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part); amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 8, Ch. 352, L. 1985.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4, part 3.

50-60-509. Person commencing work without a permit to pay double the permit fee — exception. Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the department of commerce or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(part); amd. Sec. 9, Ch. 352, L. 1985.**

50-60-510. Inspection by department to insure compliance. All plumbing and drainage systems may be inspected by the department of commerce or its authorized representative to insure compliance with the requirements of the state plumbing code.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(5); amd. Sec. 10, Ch. 352, L. 1985.**

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-60-511. Duty of permittee regarding inspection and compliance. (1) It is the duty of the person doing work authorized by the permit to notify the department of commerce, orally or in writing, that the work is ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

(2) It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

History: **En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(6); amd. Sec. 11, Ch. 352, L. 1985.**

50-60-512. Department authorized to order work stopped for noncompliance. Whenever any work is being done contrary to the provisions of the state plumbing code, the department of commerce or its authorized representative may, after a hearing conducted under the provisions of the

Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(7); amd. Sec. 12, Ch. 352, L. 1985.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

50-60-513. Suspension or revocation of permit. The department of commerce may suspend or revoke a permit whenever it is issued in error or on the basis of incorrect information supplied or work performed thereunder is in violation of any of the provisions of this part or Title 37, chapter 69.

History: En. Sec. 1, Ch. 236, L. 1967; amd. Sec. 240, Ch. 350, L. 1974; amd. Sec. 1, Ch. 446, L. 1975; amd. Sec. 1, Ch. 226, L. 1977; amd. Sec. 7, Ch. 504, L. 1977; R.C.M. 1947, 66-2427(8); amd. Sec. 13, Ch. 352, L. 1985.

50-60-514. District court — jurisdiction — restraining orders. The district court of any county has jurisdiction in equity, on application of the department of commerce, to restrain from connection any new plumbing installations on finding, after hearing, that the plumbing is inferior to the standards of the state plumbing code.

History: En. Sec. 6, Ch. 251, L. 1959; amd. Sec. 237, Ch. 350, L. 1974; amd. Sec. 6, Ch. 504, L. 1977; R.C.M. 1947, 66-2417; amd. Sec. 14, Ch. 352, L. 1985.

Cross-References

Injunctions, Title 27, ch. 19.

50-60-515. Penalty for violations — exceptions. A person who works at the field of plumbing or maintains or conducts a plumbing business or an individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this part or at a time when he is not exempt from the provisions of this part pursuant to the provisions of a duly enacted and subsisting ordinance of a city or town is guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than $10 and not more than $100 for each separate offense. However, this part shall not be construed to apply to or affect plumbing or pipefitting as indicated in the 37-69-102 and 50-60-503 exceptions.

History: En. Sec. 11, Ch. 203, L. 1949; amd. Sec. 4, Ch. 185, L. 1961; amd. Sec. 7, Ch. 497, L. 1975; amd. Sec. 23, Ch. 101, L. 1977; R.C.M. 1947, 66-2411.

Part 6

Electrical Installations

Part Cross-References

Licensing of electricians, Title 37, ch. 68, part 3.

Electrical easements, 70-17-101, 70-17-102.

50-60-601. Purpose. The purpose of this part is to protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions; to protect property from the hazard of electrically caused fires and explosions; to establish a procedure for determining where and by whom electrical installations are to be made; and to insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part).

50-60-602. Exceptions. (1) Nothing in this part shall be deemed to apply to the installation, alteration, or repair of electrical signal or communications equipment owned or operated by a public utility or a city.

(2) The inspection provisions of this part do not apply to regularly employed maintenance electricians doing maintenance work on the business premises of their employer nor do they apply to line work on the business premises of the employer or to ordinary and customary in-plant or on-site installations, modifications, additions, or repairs.

(3) Any person who plugs in an electrical appliance where approved electrical outlet is already installed shall not be considered as an installer.

(4) No provisions of this part shall in any manner interfere with, hamper, preclude, or prohibit any vendor of any electrical appliance from selling, delivering, and connecting any electrical appliance if the connection does not necessitate the installation of electrical wiring of the structure where the appliance is to be connected.

History: En. Sec. 12, Ch. 148, L. 1965; amd. Sec. 1, Ch. 423, L. 1973; amd. Sec. 1, Ch. 269, L. 1975; R.C.M. 1947, 66-2812(part).

50-60-603. Electrical installations to comply with building codes adopted by department. (1) All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 50-60-602, shall be made substantially in accord with building codes adopted by the department of commerce.

(2) Rules and standards relating to buildings and equipment shall be promulgated by the department.

History: En. Sec. 2, Ch. 148, L. 1965; amd. Sec. 19, Ch. 366, L. 1969; amd. Sec. 1, Ch. 425, L. 1973; amd. Sec. 12, Ch. 226, L. 1974; amd. Sec. 269, Ch. 350, L. 1974; amd. Sec. 8, Ch. 504, L. 1977; R.C.M. 1947, 66-2802(part); amd. Sec. 15, Ch. 352, L. 1985.

50-60-604. Department to make inspections, issue inspection tags, and establish fees. The department of commerce shall make inspections of electrical installations, issue inspection tags for these installations, and establish and charge a reasonable and uniform fee for the inspections, which may not exceed the expense of providing the inspection.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(1); amd. Sec. 16, Ch. 352, L. 1985.

50-60-605. Power supplier not to energize installation without inspection tag. Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Except for temporary connections which the department may authorize by rule for a period not exceeding 14 days without a preconnection inspection, power suppliers may not connect with or energize an electrical installation under this part unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department of commerce.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(2); amd. Sec. 1, Ch. 101, L. 1979; amd. Sec. 17, Ch. 352, L. 1985.

50-60-606. Power supplier to deliver inspection tag to department after installation energized. Immediately after an installation has been energized, the power supplier shall deliver to the department of commerce the inspection tag covering the installation.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(3); amd. Sec. 18, Ch. 352, L. 1985.

50-60-607. Unlawful acts. It is unlawful for a person, partnership, company, firm, association, or corporation other than a power supplier to energize an electrical installation under this part unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department of commerce.

History: En. 66-2805.1 by Sec. 273, Ch. 350, L. 1974; amd. Sec. 9, Ch. 504, L. 1977; R.C.M. 1947, 66-2805.1(4); amd. Sec. 19, Ch. 352, L. 1985.

Part 7

Elevators

50-60-701. Inspection of passenger elevators and escalators — fees. (1) All passenger elevators and escalators in public places may be inspected by the department to insure compliance with the requirements of the state building code. The department shall establish and charge a reasonable and uniform fee for the inspections that may not exceed the expense of providing the inspection.

(2) In lieu of inspection by the department, inspections of passenger elevators and escalators to assure compliance with the state building code may be made by:

(a) a maintenance company representative certified by the department who regularly maintains or services the elevator or escalator equipment; or

(b) an insurance company representative certified by the department who regularly inspects an elevator or escalator insured by the company against public liability and who maintains a service record of the elevator or escalator.

(3) When an inspection of a passenger elevator or escalator is made pursuant to subsection (2), a copy of the condition report must be provided to the owner and must be sent to the department. The department may not charge more than $10 for receiving and processing a condition report for each elevator or escalator in any building and for issuing certificates of inspection therefor if the certified maintenance or insurance company inspector doing

the inspection certifies to the department that all deficient elevator or escalator conditions noted in the condition report have been corrected and no follow-up by the department in that regard is necessary.

History: **En. Sec. 2, Ch. 315, L. 1979; amd. Sec. 1, Ch. 569, L. 1981.**

50-60-702. Department to adopt inspection standards — certification of inspectors. (1) The department shall adopt standards for passenger elevator and escalator inspections that assure compliance with the requirements of the state building code.

(2) The department shall adopt rules for the certification of maintenance and insurance company inspectors who may inspect passenger elevators and escalators pursuant to 50-60-701.

History: **En. Sec. 3, Ch. 315, L. 1979.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-60-703. When inspection of elevators not necessary. Elevators that do not carry passengers do not need to be inspected by the department.

History: **En. Sec. 4, Ch. 315, L. 1979.**

CHAPTER 61

FIRE SAFETY IN PUBLIC BUILDINGS

Part 1 — General Provisions

50-61-101. Purpose of chapter.
50-61-102. Department of justice to administer chapter.
50-61-103. Application of chapter — definitions.
50-61-104. Repealed.
50-61-105. Repealed.
50-61-106. Unlawful to obstruct fire exit.
50-61-107 through 50-61-111. Repealed.
50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies.
50-61-113. Prior approval required for construction of state-owned building designed for human occupancy.
50-61-114. Fire chief and fire inspector to make inspections.
50-61-115. Notice of violations.
50-61-116. Lessee who corrects violations entitled to reimbursement.
50-61-117. Prosecution of violations.
50-61-118. Injunction authorized.
50-61-119. Violation of chapter a misdemeanor.
50-61-120. Exceeding fire code limits for storage of smokeless powder and small arms primers.
50-61-121. Restrictions on storage of smokeless powder and small arms primers.

Part 1

General Provisions

Part Cross-References

Adoption of fire codes by municipalities, 7-5-108, 7-5-4202.

Fire protection in unincorporated towns, Title 7, ch. 33, parts 21 through 23; Title 19, ch. 12, parts 1 through 4.

Municipal power to establish and maintain a fire department and alarm system, 7-33-4201, 7-33-4202.

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Fire safety certification requirement for day-care centers, 52-2-734.

50-61-101. Purpose of chapter. The purpose and intent of this chapter are to provide for the public safety in case of fire in those occupancies specified in 50-61-103 and to provide for inspection of the buildings and premises by specified officers.

History: En. Sec. 1, Ch. 279, L. 1947; amd. Sec. 9, Ch. 229, L. 1967; R.C.M. 1947, 69-1801; amd. Sec. 14, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Near middle, after "50-61-103", deleted "to provide for fire escapes, fire-fighting apparatus, fire alarms"; and made minor changes in style. Amendment effective April 29, 1991.

50-61-102. Department of justice to administer chapter. (1) The department of justice has general charge and supervision of the enforcement of this chapter, and the officers enumerated in 50-61-114 shall act under its general charge and supervision, shall assist the department in giving effect to this chapter, and are subject to its direction and the rules adopted under 50-3-102 and 50-3-103 for the enforcement of 50-61-120 and 50-61-121 and this chapter.

(2) Upon its approval of a fire code and a plan for enforcement of the code filed by a municipality or district, the department may certify a municipal or district fire inspection program for local enforcement.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(6); amd. Sec. 5, Ch. 506, L. 1989; amd. Sec. 15, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in four places, substituted reference to Department of Justice for reference to State Fire Marshal; and inserted (2) regarding certification of a municipal or district fire inspection program for local enforcement. Amendment effective April 29, 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

50-61-103. Application of chapter — definitions. This chapter applies to the occupancies defined below:

(1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others:

(a) armories;

(b) assembly halls;

(c) auditoriums;
(d) bowling alleys;
(e) broadcasting studios;
(f) chapels;
(g) churches;
(h) club rooms;
(i) dance halls;
(j) exhibition rooms;
(k) gymnasiums;
(l) lecture halls;
(m) lodge rooms;
(n) motion picture theaters;
(o) museums;
(p) night clubs;
(q) opera houses;
(r) passenger stations;
(s) pool rooms;
(t) recreation areas;
(u) restaurants;
(v) skating rinks;
(w) television studios;
(x) theaters; and
(y) taverns.

(2) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business or the rendering or receiving of professional services, including among others:
(a) banks;
(b) barbershops;
(c) beauty parlors;
(d) office buildings;
(e) radio stations;
(f) telephone exchanges; and
(g) television stations.

(3) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or receiving educational instruction, including among others:
(a) academies;
(b) colleges;
(c) libraries;
(d) schools; and
(e) universities.

(4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, including among others:
(a) assembly plants;
(b) creameries;
(c) electric substations;
(d) factories;

(e) ice plants;
(f) laboratories;
(g) laundries;
(h) manufacturing plants;
(i) mills;
(j) power plants;
(k) processing plants;
(l) pumping stations;
(m) repair garages;
(n) smokehouses; and
(o) workshops.

(5) “Institutional occupancy” means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained, including among others:

(a) asylums;
(b) homes for the aged;
(c) hospitals;
(d) houses of correction;
(e) day-care facilities;
(f) infirmaries;
(g) jails;
(h) nurseries;
(i) orphanages;
(j) nursing homes;
(k) penal institutions;
(l) reformatories;
(m) sanitariums;
(n) long-term care facilities; and
(o) boarding homes.

(6) “Residential occupancy” means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are provided and who are not harbored or detained to receive medical, charitable, or other care or treatment or are not involuntarily detained, including among others (but not including single-family private houses):

(a) apartments;
(b) clubhouses;
(c) convents;
(d) dormitories;
(e) dwellings;
(f) hotels;
(g) motels;
(h) multifamily houses; and
(i) lodging houses.

History: En. Sec. 2, Ch. 279, L. 1947; amd. Sec. 10, Ch. 229, L. 1967; amd. Sec. 12, Ch. 187, L. 1977; R.C.M. 1947, 69-1802.

50-61-104. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 3, Ch. 279, L. 1947; amd. Sec. 1, Ch. 159, L. 1949; R.C.M. 1947, 69-1803.

50-61-105. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 4, Ch. 279, L. 1947; R.C.M. 1947, 69-1804.

50-61-106. Unlawful to obstruct fire exit. It is unlawful to obstruct in any manner any fire exit, or any hallway, corridor, or entranceway leading to a fire exit, required by rules adopted by the department of justice.

History: En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part); amd. Sec. 16, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Near middle, after "fire", substituted "exit, or any hallway, corridor, or entranceway leading to a fire exit" for "escape" and at end, after "required by", substituted "rules adopted by the department of justice" for "the provisions of this chapter or hallway, corridor, or entranceway leading thereto"; and made minor changes in style. Amendment effective April 29, 1991.

50-61-107 through 50-61-111. Repealed. Sec. 37, Ch. 706, L. 1991.

Compiler's Comments

Histories of Repealed Sections:

50-61-107. En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-108. En. Sec. 5, Ch. 279, L. 1947; R.C.M. 1947, 69-1805(part).

50-61-109. En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(b), (c).

50-61-110. En. Sec. 6, Ch. 279, L. 1947; R.C.M. 1947, 69-1806(a).

50-61-111. En. Sec. 7, Ch. 279, L. 1947; amd. Sec. 1, Ch. 227, L. 1959; amd. Sec. 1, Ch. 254, L. 1975; R.C.M. 1947, 69-1807.

50-61-112. Prior approval required for construction or alteration of educational and institutional occupancies. (1) Within an incorporated municipality, an educational or institutional occupancy, whether public or private, may not be constructed or have alterations made costing $1,500 or more until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to and approved by the state fire prevention and investigation program of the department of justice.

(2) Outside an incorporated municipality, an assembly, educational, or institutional occupancy may not be constructed or have alterations made costing $1,500 or more until a permit has been issued for the construction or alteration by the county commissioners. A fee of $10 shall be paid to the county treasurer for each permit. A copy of the permit shall be furnished to the county assessor. No permit may be issued until sketches or architectural plans for the construction or alteration, whichever are available, are submitted to and approved by the state fire prevention and investigation program of the department of justice. The state fire prevention and investigation program of the department of justice and county sheriffs are responsible for enforcing the provisions of this subsection.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(1), (2); amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also

conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

County Commissioners, Title 7, ch. 4, part 21.

County Treasurer, Title 7, ch. 6, part 21.

County Assessor, 15-8-102.

State fire prevention and investigation program, Title 50, ch. 3.

50-61-113. Prior approval required for construction of state-owned building designed for human occupancy. A building designed for human occupancy owned or controlled by the state may not be constructed until plans for the construction have been submitted to and approved by the state fire prevention and investigation program of the department of justice.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(3); amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

Budget for fire protection of state-owned buildings, 2-17-112.

State fire prevention and investigation program, Title 50, ch. 3.

50-61-114. Fire chief and fire inspector to make inspections. The chief of the fire department of each municipality or district when a fire inspection program is established or a fire inspector of the department of justice when no fire inspection program exists, for the purpose of examining the premises for violations of this chapter and rules adopted under 50-3-103 for the enforcement of this chapter:

(1) shall enter into school buildings at least once each 12 months; and

(2) may enter into all other buildings and upon all other premises within his jurisdiction, according to priority schedules established by the department for conducting inspections of buildings and premises.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(4); amd. Sec. 1, Ch. 323, L. 1985; amd. Sec. 17, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In introductory clause, in two places, substituted "fire inspection program" for "fire department" and near middle, after "established", substituted "or a fire inspector of the department of justice" for "and the county sheriff or deputy fire marshals"; in (2), after "jurisdiction", substituted "according to priority schedules established by the department for conducting inspections of buildings and premises" for "at least once each 18 months"; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

Structures creating fire hazard, 50-62-102.

50-61-115. Notice of violations. (1) When a building is found that is not in compliance with fire safety rules promulgated by the department of justice, the person making the inspection or the department shall serve a written notice upon the party whose duty it is to maintain the safety of the building.

(2) The notice must specify the time within which the defective conditions must be remedied, which may not be more than 90 days.

(3) The notice is served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last-known address of the person to be notified. Whenever buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part); amd. Sec. 18, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning after "found", substituted "that is not in compliance with fire safety rules promulgated by the department of justice" for "which requires the erection of fire escapes and upon which fire escapes have not been erected according to the provisions of this chapter or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition", near middle substituted "department" for "state fire marshal", and at end substituted "maintain the safety of the building" for "erect the fire escapes or maintain such fire apparatus"; in (2), after "within which", deleted "the fire escapes shall be erected or"; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

Structures creating fire hazard, 50-62-102.

50-61-116. Lessee who corrects violations entitled to reimbursement. The occupant or lessee of any building who is required to erect fire escapes under the provisions of this chapter is entitled to reimburse himself for the cost and expense of erecting the fire escapes out of the rent or lease money of the premises, and the reimbursement is not a breach of any existing lease, contract, or convenant thereof or grounds for any action or damage ouster.

History: En. Sec. 8, Ch. 279, L. 1947; amd. Sec. 11, Ch. 229, L. 1967; amd. Sec. 13, Ch. 187, L. 1977; R.C.M. 1947, 69-1808(part).

Cross-References

Structures creating fire hazard, 50-62-102.

Montana Residential Landlord and Tenant Act of 1977, Title 70, ch. 24.

50-61-117. Prosecution of violations. It is the duty of the department of justice or other authorized officer to furnish the county attorney with all evidence of violations of rules adopted by the department within the county where said violations occur, and, if the evidence discloses the fact that a violation has occurred, it is the duty of the county attorney of the county to prosecute the person committing the violation in the same manner as in other cases.

History: En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part); amd. Sec. 19, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning substituted "department of justice or other authorized officer to furnish the county attorney with all evidence of violations of rules adopted by the department" for "state fire marshal or any person authorized to act in his stead to file complaint for violations of the provisions of this chapter in any court of competent jurisdiction", near middle inserted "if the evidence discloses the fact that a violation has occurred", and at end substituted "the person committing the violation in the same manner as in other cases" for "all such complaints so filed"; and made minor changes in style. Amendment effective April 29, 1991.

50-61-118. Injunction authorized. In addition to the other remedies and penalties provided in this chapter, upon the failure of any of the parties charged with the duty to maintain the safety of the building premises in accordance with rules adopted by the department of justice, the attorney general of the state or the county attorney of the county where the building is located shall bring an action against the owner, lessee, and occupants of the building for an injunction enjoining the further occupancy of it until it is in compliance with this chapter. The action may be brought in the county where the building is located.

History: **En. Sec. 11, Ch. 279, L. 1947; R.C.M. 1947, 69-1810; amd. Sec. 20, Ch. 37, L. 1979; amd. Sec. 20, Ch. 706, L. 1991.**

Compiler's Comments

1991 Amendment: Near middle substituted "maintain the safety of the building premises in accordance with rules adopted by the department of justice" for "erect fire escapes or to install and maintain fire alarms or fire extinguishers or other fire apparatus in accordance with this chapter"; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

Injunctions, Title 27, ch. 19.

50-61-119. Violation of chapter a misdemeanor. (1) Any person failing, neglecting, or refusing to comply with any of the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not less than $50.

(2) Each day's failure to comply with any of the provisions of this chapter, after the expiration of the time stipulated in the written notice provided for herein, shall constitute a separate offense.

History: **En. Sec. 10, Ch. 279, L. 1947; R.C.M. 1947, 69-1809(part).**

50-61-120. Exceeding fire code limits for storage of smokeless powder and small arms primers. (1) A retail establishment may exceed the limits prescribed by an adopted fire or safety code or a local government ordinance or resolution for the storage of smokeless powder and small arms primers if the storage conforms to the provisions contained in 50-61-121.

(2) Nothing in this section may be construed to allow repackaging of smokeless powder from larger to smaller containers on the retail premises.

History: **En. Sec. 1, Ch. 506, L. 1989.**

Cross-References

Regulation of explosives and inflammable materials, 7-33-4205.

Powers and duties of Department of Justice, 50-3-102.

50-61-121. Restrictions on storage of smokeless powder and small arms primers. (1) A retail establishment may stock up to 400 pounds of smokeless powder on the premises of a building with a sprinkler system or 200 pounds on the premises of a building without a sprinkler system if storage of this stock conforms to the following conditions:

(a) no more than 20 pounds are on display in a customer service area;

(b) the storage area is clearly posted as off limits to customers;

(c) the storage area is clearly posted prohibiting smoking or any open flame or sparks; and

(d) the storage area is a room designed and constructed to restrict smoke travel that is separate from the customer service area, that has a self-closing entrance door, and that conforms to one of the following:

(i) It is constructed of material sufficient to achieve a 1-hour fire resistant-rated barrier between the storage area and the customer service area. The smokeless powder must be stored in cabinets made of wood or equivalent material that is at least 1 inch thick, and each cabinet must contain no more than 200 pounds of smokeless powder. Cabinets must be separated by 25 feet.

(ii) It is protected by a fire suppression sprinkler system approved by the state fire prevention and investigation program of the department of justice or a fire marshal of the local jurisdiction, and the storage area has cabinets as provided for in subsection (1)(d)(i).

(iii) Smokeless powder stock is contained in a cabinet with casters and constructed of wood at least 1 inch thick that is covered on all sides with 5/8-inch sheetrock.

(2) A retail establishment may stock up to 250,000 small arms primers if storage of this stock conforms to the following conditions:

(a) no more than 20,000 primers in a building with a sprinkler system or 10,000 primers in a building without a sprinkler system are on display in a customer service area;

(b) the storage area must conform to the conditions imposed in subsections (1)(a) through (1)(d), except that no more than 125,000 small arms primers may be stored in one cabinet, and the minimum required separation between cabinets is 15 feet; and

(c) small arms primers are retained in packaging approved by the U.S. department of transportation.

History: En. Sec. 2, Ch. 506, L. 1989; amd. Sec. 21, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In (1)(d)(ii) substituted "prevention and investigation program of the department of justice" for "marshal". Amendment effective April 29, 1991.

Cross-References

Regulation of explosives and inflammable materials, 7-33-4205.

Powers and duties Department of Justice, 50-3-102.

CHAPTER 62

FIRE HAZARDS

Part 1 — Removal of Hazards

50-62-101. Entering of buildings for purpose of examination authorized.
50-62-102. Structures or conditions creating fire hazard a public nuisance — order to remedy.
50-62-103. Service of order to repair hazardous condition or demolish structure.
50-62-104. Answer of owner or occupant.
50-62-105. Default judgment.

50-62-106. Hearing and judgment.
50-62-107. Proceedings on failure to comply with order.
50-62-108. Repealed.
50-62-109. Repealed.
50-62-110. Appeal to department of justice.
50-62-111. Penalty for failure to comply with order to correct.

Part 1

Removal of Hazards

Part Cross-References

Municipal power to inspect and regulate certain fire hazards, explosives, and other inflammable material, 7-33-4204, 7-33-4205.

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Criminal offense to maintain a public nuisance, 45-8-111.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

Fire hazards in oil and gas operations, 82-11-302.

50-62-101. Entering of buildings for purpose of examination authorized. The officers of the state fire prevention and investigation program of the department of justice or the chief of the fire department of each municipality or district where a fire department is established at all reasonable hours may, as authorized by law, enter into all buildings and upon all premises within his jurisdiction for the purpose of determining whether the building or premise conforms to laws and rules relating to fire hazards and fire safety.

History: En. Sec. 15, Ch. 148, L. 1911; re-en. Sec. 2752, R.C.M. 1921; re-en. Sec. 2752, R.C.M. 1935; amd. Sec. 8, Ch. 229, L. 1967; R.C.M. 1947, 82-1218; amd. Sec. 22, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: At beginning substituted "officers of the state fire prevention and investigation program of the department of justice or" for "state fire marshal, his deputies and subordinates", near middle, after "established", deleted "or the county sheriff where no fire department exists", and after "may" inserted "as authorized by law"; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-62-102. Structures or conditions creating fire hazard a public nuisance — order to remedy. (1) If any building or other structure that for want of proper repair; by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or the existence of any combustible materials, flammable conditions, or other fire hazards; or for any other cause or reason is especially liable to fire and is dangerous to the safety of the building premises or to the public or is so situated as to endanger other buildings and property in the vicinity, the state fire prevention and investigation program of the department of justice or other officer may declare the building or other structure to be a public nuisance and proceed according to 50-62-103 or subsection (2) of this section.

(2) If the state fire prevention and investigation program, an officer of the program, or an officer mentioned in 50-62-101 determines that a building or other structure constitutes a public nuisance for any reason identified in subsection (1), the department or other officer shall order the hazardous condition or material to be removed or remedied. The order must be in writing and directed generally to the owner, lessee, agent, or occupant of the building or structure.

(3) If the hazardous condition or material can be removed or remedied within a period of 24 hours, the order must contain notice that the condition or material must be remedied or removed. The owner, lessee, agent, or occupant upon whom the notice is served who fails to comply with the notice is liable for any expenses incurred in the removal or remedying of the hazardous condition or material by the fire prevention and investigation program or other officer mentioned in 50-62-101.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part); amd. Sec. 23, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "apparatus", inserted "or the existence of any combustible materials, flammable conditions, or other fire hazards", after "fire and" inserted "is dangerous to the safety of the building premises or to the public or", and after "vicinity" substituted "the state fire prevention and investigation program of the department of justice or other officer may declare the building or other structure to be a public nuisance and proceed according to 50-62-103 or subsection (2) of this section" for "is hereby declared to be a public nuisance"; inserted (2) and (3) regarding removal or remedy of the hazardous condition or material; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

Application of Montana Rules of Civil Procedure to abatement proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

Nuisances, Title 27, ch. 30.

50-62-103. Service of order to repair hazardous condition or demolish structure. (1) If the fire prevention and investigation program of the department of justice or any officer mentioned in 50-62-101, upon an examination or inspection, determines that a building or other structure constitutes a public nuisance for any reason identified in 50-62-102 and the condition cannot be removed or remedied within 24 hours, the program or officer shall order the hazardous condition to be repaired or the structure to be torn down or demolished and all dangerous conditions remedied.

(2) The order shall be in writing, shall recite the grounds therefor, and shall be filed in the office of the clerk of the district court of the county in which the building or structure ordered to be altered, repaired, or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in that court.

(3) A copy of the order filed as aforesaid, together with a written notice that it has been filed and will be put in force unless the owner, occupant, or tenant shall file with the clerk of the court his objections or answer thereto within the time specified in 50-62-104, shall be served upon the owner and any purchaser under contract for deed of the building or structure directed to

be altered, repaired, or demolished. If there is a tenant occupying the building, service shall also be made upon him. Service shall be made upon the owner and occupant, if there is one, personally either within or without the state.

(4) If the whereabouts of the owner or any purchaser under contract for deed is unknown and cannot be ascertained by the department of justice by the exercise of reasonable diligence, then upon filing in the office of the clerk of the district court an affidavit to this effect, service of the notice upon the owner or any purchaser under contract for deed may be made by the clerk of the district court by publication of it once in each week for 3 successive weeks in a newspaper printed and published in the county in which the building or structure is located and by posting a copy thereof in a conspicuous place upon the building or structure, and the service so made is complete upon the expiration of the publication period. Proof of service of the notice shall be filed in the office of the clerk of the district court within 5 days after the service thereof.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R.C.M. 1921; amd. Sec. 1, Ch. 139, L. 1929; re-en. Sec. 2753, R.C.M. 1935; R.C.M. 1947, 82-1219(part); amd. Sec. 21, Ch. 37, L. 1979; amd. Sec. 16, Ch. 526, L. 1983; amd. Sec. 24, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (1) substituted "fire prevention and investigation program of the department of justice" for "state fire marshal, a deputy state fire marshal", near middle, after "structure", substituted "constitutes a public nuisance for any reason identified in 50-62-102 and the condition cannot be removed or remedied within 24 hours, the program or officer" for "which for want of proper repair or by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections or defective heating apparatus or for any other cause or reason is especially liable to fire and is so situated as to endanger other buildings or property in the vicinity, he", near end, after "order the", substituted "hazardous condition" for "structure", after "repaired" inserted "or the structure to be", and after "all" deleted "materials removed and all"; in (4), near beginning, substituted "department of justice" for "state fire marshal"; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

Application of Montana Rules of Civil Procedure to abatement proceedings, Rule 81(a), M.R.Civ.P. (see Title 25, ch. 20).

50-62-104. Answer of owner or occupant. (1) The owner of any building so condemned or any occupant or lessee upon whom such notice or order shall be served, within 20 days from the date of such service, may file with the clerk of the district court and serve upon the department of justice or any officer mentioned in 50-62-101 written objections to said order in the form of a verified answer denying the existence of any of the facts therein cited which he desires to controvert.

(2) If an answer be filed and served, the court shall hear and determine the issues so raised and give judgment thereon.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part); amd. Sec. 25, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Near middle of (1) substituted "department of justice" for "said state fire marshal, a deputy state fire marshal". Amendment effective April 29, 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

50-62-105. Default judgment. If no answer is so filed and served, the owner and all other persons in interest shall be deemed to be in default, and thereupon the court shall affirm the order of condemnation and direct the department of justice or other officer to proceed with the enforcement thereof.

History: En. Sec. 2753-A, Ch. 139, L. 1929; re-en. Sec. 2753.1, R.C.M. 1935; R.C.M. 1947, 82-1220(part); amd. Sec. 26, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Near middle substituted "department of justice or other officer" for "state fire marshal". Amendment effective April 29, 1991.

50-62-106. Hearing and judgment. (1) The court, upon application of the department of justice or any officer mentioned in 50-62-101, shall make its order fixing a time and place for such hearing, which time shall be within 20 days from the date of the filing of the answer or as soon thereafter as the matter may be heard.

(2) If upon trial the order shall be sustained, judgment shall be given accordingly and a time shall be fixed within which the building or structure shall be altered, destroyed, or repaired in compliance with such order, but otherwise the court shall annul or set aside the order of condemnation.

History: En. Sec. 2753-B, Ch. 139, L. 1929; re-en. Sec. 2753.2, R.C.M. 1935; R.C.M. 1947, 82-1221; amd. Sec. 27, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (1) substituted "department of justice" for "state fire marshal, deputy state fire marshal"; and made minor changes in style. Amendment effective April 29, 1991.

50-62-107. Proceedings on failure to comply with order. (1) If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure within the time fixed by the court in case a trial is had therein, then the department of justice or any other officer authorized in 50-62-101 may proceed to cause such building or structure to be altered, repaired, or demolished in accordance with the directions contained in such order.

(2) Where a building or structure is demolished in accordance with such order, the department or any other officer authorized in 50-62-101 may sell or dispose of the salvaged materials therefrom at public auction upon 5 days' posted notice. The department or other officer shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report thereon with a statement of said expenses or the balance thereof, the expense incurred, and the amount, if any, received from such salvage sale to the court for approval and allowance. The court shall examine, correct if necessary, and allow said expense account, and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated. If the amount thereof is not paid by the owner or other party in interest within 3 months after the account has been examined and approved by the court, the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution, and the proceeds of said sale shall be paid into the treasury of the governmental unit which incurred the expenses. If the amount received as salvage or on sale

shall exceed the expense incurred by the governmental unit, the court shall direct the payment of the surplus to those parties with encumbrances, mortgages, or liens on the real estate in order of their priority and any surplus thereafter to the owner or the payment of the same into court for their use and benefit.

History: En. Sec. 2753-C, Ch. 139, L. 1929; re-en. Sec. 2753.3, R.C.M. 1935; amd. Sec. 1, Ch. 418, L. 1975; R.C.M. 1947, 82-1222; amd. Sec. 1, Ch. 278, L. 1981; amd. Sec. 28, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near middle, and in (2), near beginning of first sentence, substituted reference to Department of Justice for reference to State Fire Marshal; in (2), at beginning of second sentence, substituted "The department or other officer" for "This person"; and made minor changes in style. Amendment effective April 29, 1991.

Cross-References

Mortgages, Title 71, ch. 1.
Liens, Title 71, ch. 3.

50-62-108. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part); amd. Sec. 6, Ch. 506, L. 1989.

50-62-109. Repealed. Sec. 37, Ch. 706, L. 1991.

History: En. Sec. 2753-D, Ch. 139, L. 1929; re-en. Sec. 2753.4, R.C.M. 1935; amd. Sec. 1, Ch. 187, L. 1947; R.C.M. 1947, 82-1223(part).

50-62-110. Appeal to department of justice. If the owner or occupant deems himself aggrieved by an order of an officer under this chapter, he may appeal to the department of justice within 24 hours and the cause of the complaint shall at once be investigated by direction of the department. Unless such order is revoked by the department, it shall remain in force and forthwith be complied with by such owner or occupant.

History: En. Sec. 17, Ch. 148, L. 1911; re-en. Sec. 2754, R.C.M. 1921; re-en. Sec. 2754, R.C.M. 1935; R.C.M. 1947, 82-1224; amd. Sec. 29, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In three places substituted reference to Department of Justice for reference to State Fire Marshal. Amendment effective April 29, 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

50-62-111. Penalty for failure to comply with order to correct. An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in this chapter shall be guilty of a misdemeanor and shall be fined not less than $10 or more than $500 for each day's neglect.

History: En. Sec. 18, Ch. 148, L. 1911; re-en. Sec. 2755, R.C.M. 1921; re-en. Sec. 2755, R.C.M. 1935; R.C.M. 1947, 82-1225; amd. Sec. 30, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Near middle, after "shall be", inserted "guilty of a misdemeanor and shall be" and near end increased maximum fine from $50 to $500. Amendment effective April 29, 1991.

CHAPTER 63

INVESTIGATION OF FIRES

Part 1 — General Provisions

50-63-101. Examination of premises where fire occurred authorized.
50-63-102. Penalty for setting or leaving fire causing damage.
50-63-103. Liability of offender for damages and costs.

Part 2 — Initial Investigation

50-63-201. Cause of fire to be investigated.
50-63-202. Fire chief or sheriff to conduct investigation.
50-63-203. Reports to be filed with department of justice.
50-63-204. Penalty for failure to investigate or file report.

Part 3 — Investigation by Fire Marshal
(Repealed. Sec. 37, Ch. 706, L. 1991)

Part 4 — Information from Insurers

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request.
50-63-402. Insurer to report suspicious fires.
50-63-403. Agencies to keep information confidential.
50-63-404. Testimony of agency personnel in action to recover under insurance policy.
50-63-405. Exemption of insurer from liability.

Chapter Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Part 1

General Provisions

50-63-101. Examination of premises where fire occurred authorized. In the performance of the duties imposed by the provisions of this chapter, officers of the department of justice may, as authorized by law, enter upon and examine any building or premises where a fire has occurred and other buildings and premises adjoining or near thereto.

History: En. Sec. 14, Ch. 148, L. 1911; re-en. Sec. 2751, R.C.M. 1921; re-en. Sec. 2751, R.C.M. 1935; R.C.M. 1947, 82-1217; amd. Sec. 31, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Near middle substituted "officers of the department of justice" for "the state fire marshal and each of his subordinates at all times of day or night" and after "may" inserted "as authorized by law". Amendment effective April 29, 1991.

Cross-References

State fire prevention and investigation program, Title 50, ch. 3.

50-63-102. Penalty for setting or leaving fire causing damage. (1) Any person who shall upon any land within this state set or leave any fire that shall spread and damage or destroy property of any kind not his own shall upon conviction be punished by a fine of not less than $10 or more than $500. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for not less than 1 or more than 50 years.

(2) During the closed season, any person who shall kindle a campfire on land not his own in or dangerously near any forest material and leave same unquenched or who shall be a party thereto or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms or in any other manner start a fire in forest material not his own and leave same unquenched shall, upon conviction, be fined not less than $10 or more than $100 or be imprisoned in the county jail not exceeding 60 days.

History: En. Sec. 4, Ch. 170, L. 1919; re-en. Sec. 2766, R.C.M. 1921; re-en. Sec. 2766, R.C.M. 1935; R.C.M. 1947, 82-1236.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

Failure to extinguish campfires on forest lands, 76-13-123.

Throwing lighted materials on forest lands, 76-13-124.

50-63-103. Liability of offender for damages and costs. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property shall be liable for all costs and expenses incurred by the state of Montana, by any forestry association, or by any person extinguishing or preventing the spread of such fire.

History: En. Sec. 7, Ch. 170, L. 1919; re-en. Sec. 2769, R.C.M. 1921; re-en. Sec. 2769, R.C.M. 1935; R.C.M. 1947, 82-1237.

Cross-References

Failure to extinguish campfires on forest lands, 76-13-123.

Throwing lighted materials on forest lands, 76-13-124.

Part 2

Initial Investigation

50-63-201. Cause of fire to be investigated. The cause, origin, and circumstances of each fire by which property has been destroyed or damaged shall be investigated to determine the exact cause and circumstances. The department of justice may superintend and direct the investigation.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(1); amd. Sec. 32, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In second sentence substituted "department of justice" for "state fire marshal" and after "investigation" deleted "if he deems it necessary". Amendment effective April 29, 1991.

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

Offense of giving false alarms, 45-7-204.

State fire prevention and investigation program, Title 50, ch. 3.

50-63-202. Fire chief or sheriff to conduct investigation. If the fire occurs within a municipality or organized fire district, the chief of the fire department shall make the investigation. If the fire occurs outside a municipality or organized fire district, the county sheriff shall make the investigation.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part).

50-63-203. Reports to be filed with department of justice. (1) If it appears that the fire was of suspicious origin, if there was a loss of human life, or if it is determined that a criminal investigation is necessary, the official responsible for the investigation shall notify the department of justice and the appropriate law enforcement agency within 24 hours and shall file a written report of the cause with the department within 10 days.

(2) If the property was insured, as soon as any adjustment has been made, a person representing the insurance company shall notify the department of the amount of adjustment and the apparent cause and circumstances of the fire on forms furnished by the department.

(3) Each official responsible for investigating fires shall file a fire incident report on each fire with the department. Reports shall be on forms and shall contain information prescribed by the department. These reports shall be sent to the department on a monthly basis or at intervals determined necessary by the department.

History: En. Sec. 6, Ch. 148, L. 1911; re-en. Sec. 2743, R.C.M. 1921; re-en. Sec. 2743, R.C.M. 1935; amd. Sec. 6, Ch. 229, L. 1967; amd. Sec. 1, Ch. 351, L. 1973; R.C.M. 1947, 82-1209(part); amd. Sec. 33, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: Throughout section substituted reference to Department of Justice for reference to State Fire Marshal; in (1), near middle after "life", inserted "or if it is determined that a criminal investigation is necessary" and after "notify the" substituted "department of justice and the appropriate law enforcement agency" for "state fire marshal"; in (3), at end of third sentence, substituted "monthly basis or at intervals determined necessary by the department" for "weekly basis"; and made minor changes in style. Amendment effective April 29, 1991.

50-63-204. Penalty for failure to investigate or file report. Any person who fails to comply with the requirements of this part shall be fined not less than $25 or more than $200.

History: En. Sec. 8, Ch. 148, L. 1911; re-en. Sec. 2745, R.C.M. 1921; re-en. Sec. 2745, R.C.M. 1935; amd. Sec. 7, Ch. 229, L. 1967; R.C.M. 1947, 82-1211.

Part 3

Investigation by Fire Marshal (Repealed. Sec. 37, Ch. 706, L. 1991)

Part Compiler's Comments

Histories of Repealed Sections:

50-63-301. (1)En. Sec. 9, Ch. 148, L. 1911; re-en. Sec. 2746, R.C.M. 1921; re-en. Sec. 2746, R.C.M. 1935; Sec. 82-1212, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1212, 82-1215(part).

50-63-302. En. Sec. 13, Ch. 148, L. 1911; re-en. Sec. 2750, R.C.M. 1921; re-en. Sec. 2750, R.C.M. 1935; R.C.M. 1947, 82-1216.

50-63-303. (1)En. Sec. 11, Ch. 148, L. 1911; re-en. Sec. 2748, R.C.M. 1921; re-en. 2748, R.C.M. 1935; Sec. 82-1214, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1214, 82-1215(part).

50-63-304. En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-305. En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part); amd. Sec. 9, Ch. 140, L. 1985.

50-63-306. En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-307. En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; R.C.M. 1947, 82-1215(part).

50-63-308. (1)En. Sec. 10, Ch. 148, L. 1911; re-en. Sec. 2747, R.C.M. 1921; re-en. Sec. 2747, R.C.M. 1935; Sec. 82-1213, R.C.M. 1947; (2)En. Sec. 12, Ch. 148, L. 1911; amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. 2749, R.C.M. 1921; re-en. Sec. 2749, R.C.M. 1935; amd. Sec. 35, Ch. 187, L. 1977; Sec. 82-1215, R.C.M. 1947; R.C.M. 1947, 82-1213, 82-1215(part).

Part 4

Information from Insurers

Part Cross-References

Insurance and Insurance Companies, Title 33.

Property insurance, Title 33, ch. 24.

50-63-401. Insurer to provide information regarding fire loss to certain agencies upon request. Each insurer engaged in issuing fire insurance policies in the state of Montana shall upon written request of any appropriate law enforcement or fire protection agency release to the requesting agency all information in its possession relating to a fire loss of real or personal property. The information may include but is not limited to:

(1) any insurance policy relevant to the fire loss under investigation and any application for such a policy;

(2) premium payment records;

(3) the history of previous claims made by the insured for fire loss;

(4) material relating to the investigation of the loss, including statements of any person, proof of loss, and other relevant evidence.

History: **En. Sec. 1, Ch. 145, L. 1979.**

50-63-402. Insurer to report suspicious fires. Whenever an insurer has reason to believe that a fire loss in which it has an interest may be of other than accidental cause, it shall notify an appropriate law enforcement or fire protection agency and provide such agency with all material developed from its inquiry into the fire loss.

History: **En. Sec. 2, Ch. 145, L. 1979.**

Cross-References

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

50-63-403. Agencies to keep information confidential. The insured's right of individual privacy requires agencies and agency personnel receiving information furnished pursuant to 50-63-401 and 50-63-402 to hold the information in confidence unless:

(1) the insured waives his right of individual privacy; or

(2) release of the information is required pursuant to a criminal or civil proceeding.

History: **En. Sec. 3, Ch. 145, L. 1979.**

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

Criminal offense of arson or negligent arson, 45-6-102, 45-6-103.

50-63-404. Testimony of agency personnel in action to recover under insurance policy. Law enforcement and fire protection agency personnel may be required to testify as to any information in their possession regarding the fire loss of real or personal property in any civil action in which a person seeks recovery from an insurer under a policy for the fire loss.

History: **En. Sec. 4, Ch. 145, L. 1979.**

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

50-63-405. Exemption of insurer from liability. In the absence of fraud or bad faith, the insurer or person who furnished information on its behalf is not subject to liability in any civil action for:

(1) furnishing information as required by 50-63-401; or

(2) notifying an appropriate agency of a fire loss as required by 50-63-402.

History: **En. Sec. 5, Ch. 145, L. 1979.**

Cross-References

Liability, Title 27, ch. 1, part 7.

False reports to law enforcement authorities, 45-7-205.

CHAPTER 64

ASBESTOS REGULATION IN BUILDING CONSTRUCTION AND DEMOLITION

Part 1 — General Provisions

50-64-101. Purpose.
50-64-102. Definitions.
50-64-103. Rulemaking authorized.
50-64-104. Safeguards to follow during demolition.
50-64-105. Use of asbestos-containing spray products prohibited.
50-64-106. Use of fibrated product or compound — supervisory personnel required.
50-64-107. Violations — penalties.

Chapter Cross-References

Occupational Disease Act of Montana, Title 39, ch. 72.

Part 1

General Provisions

Part Cross-References

Asbestos Control Act, Title 75, ch. 2, part 5.

50-64-101. Purpose. The purpose of this chapter is to protect the citizens of Montana from the dangers precipitated by the use of spray materials containing mineral fibers. The legislature finds that if adequate safety precautions are not taken during the spray application of these materials, spraying operations may release a significant quantity of particulate matter into the ambient air. Likewise, the legislature finds the continued unregulated use of sprayed asbestos insulation and the destruction of structures containing asbestos insulation represent a significant threat to the health of workers placed in contact with these fibers and to the health of the community as a whole.

History: En. 69-7401 by Sec. 1, Ch. 570, L. 1977; R.C.M. 1947, 69-7401.

50-64-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of commerce.

(2) "Fibrated product" means a substance used in construction for whatever purpose which contains asbestos fibers which tend to disperse into ambient air during application or upon destruction or removal.

(3) "Person" means an individual, firm, corporation, partnership, association, or other legal entity.

History: En. 69-7402 by Sec. 2, Ch. 570, L. 1977; R.C.M. 1947, 69-7402; amd. Sec. 20, Ch. 352, L. 1985.

50-64-103. Rulemaking authorized. The department is granted authority to promulgate rules necessary to accomplish the purposes of this chapter.

History: En. 69-7406 by Sec. 6, Ch. 570, L. 1977; R.C.M. 1947, 69-7406.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-64-104. Safeguards to follow during demolition. The building or structure to be demolished which contains asbestos insulation or fireproofing must follow the following safeguards:

(1) Whenever possible, the local fire department shall be notified of the demolition.

(2) Signs must be posted in conspicuous locations around the building or structure being demolished warning persons to take proper precautions against exposure to asbestos fibers before entering the area.

(3) Boilers, pipes, and steel members insulated or fireproofed with asbestos must be wetted before toppling of the wall begins. This mandatory procedure applies, where practicable, to all asbestos-lined surfaces.

(4) When demolition by toppling is performed, a reasonable enclosure for dust emission control must be constructed.

(5) Adequate wetting to suppress dust must be performed before and during the demolition or toppling.

(6) Asbestos-containing debris may not be dropped or thrown from any floor and must be transported by dust-tight chutes or buckets, with the chutes or buckets sufficiently wetted to prevent dust.

(7) During transportation of the debris, it must be thoroughly wetted before loading and must be enclosed or covered during its transport to prevent dust dispersion.

(8) The asbestos-containing debris must be deposited at a sanitary landfill at which it is unlikely to be disturbed, and signs must be posted around the landfill warning that asbestos-containing debris is buried there.

History: En. 69-7403 by Sec. 3, Ch. 570, L. 1977; R.C.M. 1947, 69-7403.

50-64-105. Use of asbestos-containing spray products prohibited. The use of asbestos-containing spray products, for whatever purpose, in the construction of a building or structure is prohibited.

History: En. 69-7404 by Sec. 4, Ch. 570, L. 1977; R.C.M. 1947, 69-7404.

50-64-106. Use of fibrated product or compound — supervisory personnel required. Whenever a fibrated product or compound is applied to a surface utilizing a spray or pneumatic means of application, one person must be assigned supervisory authority for all aspects of the operation.

History: En. 69-7405 by Sec. 5, Ch. 570, L. 1977; R.C.M. 1947, 69-7405.

50-64-107. Violations — penalties. (1) A person who violates any provision of this chapter commits a misdemeanor.

(2) A person convicted of violating this chapter shall be fined no more than $1,000 or be imprisoned in the county jail for a term not to exceed 60 days, or both.

(3) Each separate occurrence in violation of this chapter is a separate offense.

History: **En. 69-7407 by Sec. 7, Ch. 570, L. 1977; R.C.M. 1947, 69-7407.**

CHAPTERS 65 THROUGH 69

RESERVED

CHAPTER 70

OCCUPATIONAL HEALTH

Part 1 — General Provisions

50-70-101. Short title.
50-70-102. Declaration of policy and purpose.
50-70-103. Definitions.
50-70-104. Administration.
50-70-105. Duties of department.
50-70-106. Duties of board.
50-70-107. Duty of physicians and others to report occupational disease.
50-70-108. Application for federal aid.
50-70-109. Confidentiality of records.
50-70-110. Hearing officer.
50-70-111. Hearings.
50-70-112. Permits.
50-70-113. Emissions prohibited.
50-70-114. Variances.
50-70-115. Inspection.
50-70-116. Enforcement.
50-70-117. Emergency procedure.
50-70-118. Penalty.

Part 1

General Provisions

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-70-101. Short title. This chapter shall be known and may be cited as the "Occupational Health Act of Montana".

History: En. Sec. 1, Ch. 316, L. 1971; R.C.M. 1947, 69-4206.

50-70-102. Declaration of policy and purpose. (1) It is hereby declared to be the public policy of this state and the purpose of this chapter to achieve and maintain such conditions at the work place as will protect human health and safety and, to the greatest degree practicable, foster the comfort and convenience of the workers at any work place of this state and enhance their productivity and well-being.

(2) To these ends it is the purpose of this chapter to provide for a coordinated statewide program of abatement and control of occupational diseases, for an appropriate distribution of responsibilities among the state and local units of government, and for a framework within which all values may be balanced in the public interest.

History: En. Sec. 2, Ch. 316, L. 1971; R.C.M. 1947, 69-4207.

50-70-103. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Air contaminant" means fumes, dust, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Board" means the board of health and environmental sciences, provided for in 2-15-2104.

(3) "Department" means the department of health and environmental sciences, provided for in Title 2, chapter 15, part 21.

(4) "Emission" means a release into the work space atmosphere of air contaminants or pollutants.

(5) "Occupational disease" means an illness, impairment, or disability that:

(a) arises from the person's employment;

(b) is caused by exposure to a substance or industrial practice which is hazardous to health;

(c) has symptoms of an industrial disease which is known to have resulted from the same type of exposure in other cases;

(d) is not the result of a person's contact or activities outside his employment.

(6) "Occupational health" is a field of specialization concerned with the problems of health maintenance, productivity, and well-being of industrial workers which are related to and affected by the conditions of work and by the stress of the industrial environment.

(7) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity.

(8) "Pollutant" means air contaminants, heat, noise, vibration, ionizing radiation, and nonionizing radiation.

(9) "Sanitary facilities" means toilets, showers, dressing rooms, lunch rooms, sewage disposal systems, and potable water systems.

(10) "Threshold limit values" means airborne concentrations of substances which, it is believed, nearly all workers may be repeatedly exposed to day after day without adverse effect.

(11) "Work place" is a place or location where a person is gainfully employed.

(12) "Worker" is a person gainfully employed at any place.

History: En. Sec. 3, Ch. 316, L. 1971; amd. Sec. 35, Ch. 349, L. 1974; R.C.M. 1947, 69-4208.

50-70-104. Administration. Except as otherwise provided, the department is responsible for administration of this chapter.

History: En. Sec. 4, Ch. 316, L. 1971; amd. Sec. 36, Ch. 349, L. 1974; R.C.M. 1947, 69-4209.

50-70-105. Duties of department. The department shall:

(1) enforce board orders by appropriate administrative and judicial proceedings;

(2) secure necessary scientific, technical, administrative, and operational service, including laboratory facilities, by contract or otherwise;

(3) prepare and develop a comprehensive plan for the prevention, abatement, and control of occupational disease;

(4) encourage voluntary cooperation by persons and affected groups to achieve the purpose of this chapter;

(5) encourage and conduct studies, investigations, and research relating to occupational diseases and their causes, effects, prevention, abatement, and control;

(6) determine by means of field studies and sampling the degree of health hazard at any work place in the state;

(7) collect and disseminate information and conduct educational and training programs relating to the prevention and control of occupational diseases;

(8) advise, consult, contract, and cooperate with other agencies of the state, local governments, industries, other states, interstate and interlocal agencies, the United States, and interested persons or groups;

(9) accept, receive, and administer grants or other funds or gifts from public or private agencies, including the United States, for the purpose of carrying out this chapter. Funds received by the department under this section shall be deposited in the state treasury to the account of the department.

History: En. 69-4211.1 by Sec. 38, Ch. 349, L. 1974; R.C.M. 1947, 69-4211.1.

50-70-106. Duties of board. The board shall:

(1) adopt, amend, and repeal rules implementing and consistent with this chapter;

(2) hold hearings relating to any aspect of or matter in the administration of this chapter at any place designated by the board;

(3) designate an attorney to assist in conducting hearings and appoint a reporter who shall be present at all hearings and take full stenographic notes of all proceedings thereat, transcripts of which will be available to the public at cost;

(4) issue orders necessary to carry out this chapter;

(5) require access to records relating to emissions;

(6) establish threshold limit values of airborne contaminants for the state as a whole.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part).

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-70-107. Duty of physicians and others to report occupational disease. (1) Before the 11th day after discovery, every physician, person in charge of a hospital or clinic, or state employee shall report an occupational disease to the department.

(2) The report shall be on forms prescribed by the department and include:

(a) name and address of the diseased person;

(b) name and business address of the employer;

(c) business of the employer;

(d) place of the person's employment;

(e) length of time the person was employed at the place where he became ill;

(f) nature of the disease;

(g) other information required by the department.

(3) Reports made under this section are neither public records nor open to public inspection. They are not admissible as evidence in any legal action or at a hearing under workers' compensation laws of this state.

History: En. Sec. 22, Ch. 197, L. 1967; R.C.M. 1947, 69-4204.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

Workers' compensation, Title 39, ch. 71.

50-70-108. Application for federal aid. The department may make application for, receive, administer, and expend any federal aid for the control of occupational diseases or the development and administration of industrial hygiene programs related to occupational disease control provided that any such application is first submitted to and approved by the board. The board shall approve any such application if it is consistent with this chapter and any other applicable requirements of law.

History: En. Sec. 15, Ch. 316, L. 1971; R.C.M. 1947, 69-4220.

50-70-109. Confidentiality of records. (1) Records or other information concerning pollutants or operations which are furnished to or obtained by the board or department and which, as certified by the owner or operator, relate to production or sales figures or to processes or production unique to the owner or operator or which would tend to affect adversely his competitive position are only for the confidential use of the board or department in the administration of this chapter unless the owner expressly agrees to their publication or availability to the general public.

(2) This section does not prevent the use of records or information by the board or department in compiling or publishing analyses or summaries

relating to the general condition at the work place if the analyses or summaries do not identify an owner or operator or reveal information made otherwise confidential by this section.

History: En. Sec. 14, Ch. 316, L. 1971; amd. Sec. 43, Ch. 349, L. 1974; R.C.M. 1947, 69-4219.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records, Title 2, ch. 6.

50-70-110. Hearing officer. The board may designate the director of health and environmental sciences as the hearing officer at any hearing set by the board and authorize him to make rulings on evidence and conduct the hearing. The board or the director of health and environmental sciences as hearing officer may compel the attendance of witnesses and the production of evidence at hearings.

History: En. Sec. 6, Ch. 316, L. 1971; amd. Sec. 37, Ch. 349, L. 1974; R.C.M. 1947, 69-4211(part).

50-70-111. Hearings. (1) No rule, amendment, or repeal shall take effect except after public hearing on due notice. Such notice shall be given by public advertisement not less than 20 or more than 30 days prior to the date set for the hearing.

(2) Nothing in this section requires a hearing prior to the issuance of an emergency order pursuant to 50-70-117.

(3) (a) Any person aggrieved by any order of the board may apply for rehearing upon one or more of the following grounds and upon no other grounds:

(i) The board acted without or in excess of its powers.

(ii) The order was procured by fraud.

(iii) The order is contrary to the evidence.

(iv) The applicant has discovered new evidence material to him which he could not, with reasonable diligence, have discovered and produced at the hearing.

(v) Competent evidence was excluded to the prejudice of the applicant.

(b) The petition must be in such form and filed in such time as the board shall prescribe.

History: En. Sec. 13, Ch. 316, L. 1971; amd. Sec. 42, Ch. 349, L. 1974; R.C.M. 1947, 69-4218.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Emergency rules, 2-4-303.

50-70-112. Permits. (1) The board may by rule prohibit the installation, alteration, or use of any machine, equipment, device, or other article which it finds may cause or contribute to occupational disease or which is intended primarily to prevent or control occupational disease, unless a permit has been obtained from it.

(2) The board may require that applications for permits shall be accompanied by plans, specifications, and such other information as it deems necessary.

(3) The board shall provide for the issuance, suspension, revocation, and renewal of permits which it may require pursuant to this section.

(4) If a permit is required, the board must decide within 90 days after receiving application whether or not the permit will issue. If no decision is rendered within that time, permission shall be deemed to have been denied.

History: En. Sec. 7, Ch. 316, L. 1971; R.C.M. 1947, 69-4212.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-70-113. Emissions prohibited. (1) The board may establish the limitations of the levels, concentrations, or quantities of emissions of various pollutants from any source necessary to prevent, abate, or control occupational diseases. Except as otherwise provided in or pursuant to this section, such levels, concentrations, or quantities shall be controlled and no emissions in excess thereof shall be lawful. The board may also establish standards for sanitary facilities and lunchrooms.

(2) The board may by rule use any widely recognized measuring system for measuring emissions of pollutants.

(3) Should federal minimum standards of industrial hygiene or occupational health be set by federal law, the board may, if necessary, set more stringent standards by rule.

History: En. Sec. 9, Ch. 316, L. 1971; R.C.M. 1947, 69-4214.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-70-114. Variances. (1) Any person who owns or is in control of any plant, building, structure process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of pollutants. The application shall be accompanied by such information and data as the board may require.

(2) The board may grant the exemption or partial exemption if it finds that:

(a) the emissions occurring or proposed to occur do not constitute an immediate danger to the health and safety of the worker; and

(b) compliance with the rules from which exemption is sought would produce hardship without equal or greater benefits to the worker.

(3) No exemption or partial exemption may be granted pursuant to this section except after a public hearing on due notice and until the board has considered the relative interests of the applicant and the worker or workers involved.

(4) No exemption or partial exemption pursuant to this section may be granted for a period to exceed 1 year, but an exemption or partial exemption may be renewed for like periods if no complaint is made to the board on account thereof or if, after a complaint has been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal may be granted except on application therefor. Application for renewal shall be made at least 60 days prior to the expiration of the

exemption or partial exemption. Immediately prior to application for renewal, the applicant shall give public notice of the application in accordance with the rules of the board. Any renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection (2)(a) of this section.

(5) An exemption, partial exemption, or renewal thereof is not a right of the applicant or holder but shall be in the discretion of the board.

(6) Nothing in this section and no exemption, partial exemption, or renewal granted may be construed to prevent or limit the application of the emergency provisions and procedures of 50-70-117 to any person or his property.

History: En. Sec. 12, Ch. 316, L. 1971; R.C.M. 1947, 69-4217; amd. Sec. 22, Ch. 37, L. 1979.

Cross-References

Criminal responsibility of corporations, 45-2-311.

50-70-115. Inspection. (1) The department may enter and inspect at a reasonable time property, premises, or a place, except a private residence, where a person is or will be employed to ascertain the state of compliance with this chapter and rules adopted under it.

(2) A person may not refuse entry or access to the department when it requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report setting forth facts found which relate to compliance status.

History: En. Sec. 8, Ch. 316, L. 1971; amd. Sec. 39, Ch. 349, L. 1974; R.C.M. 1947, 69-4213.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-70-116. Enforcement. (1) When the department has reason to believe that a violation of this chapter or rule made under it has occurred, it may have written notice and the facts alleged to constitute a violation served on the alleged violator and may include an order to take necessary corrective action within a reasonable period of time stated in the order. An order becomes final unless, no later than 30 days after the date of notice is received, the person named requests in writing a hearing before the board. On receipt of a request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that a violation has occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the pollutant.

(3) Instead of issuing the order provided for in subsection (1) of this section, the board may either:

(a) require that the alleged violator appear before it for a hearing at a time and place specified in a notice and answer the charges complained of; or

(b) initiate action under 50-70-118.

(4) This chapter does not prevent the board from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of parties.

History: En. Sec. 10, Ch. 316, L. 1971; amd. Sec. 40, Ch. 349, L. 1974; R.C.M. 1947, 69-4215.

Cross-References

Subpoenas and witnesses, Title 26, ch. 2.

50-70-117. Emergency procedure. (1) Any other law to the contrary notwithstanding, if the department finds that a generalized hazard at a work place exists and that it creates an emergency requiring immediate action to protect human health, the department shall order persons causing or contributing to the hazard to reduce or discontinue immediately the emissions creating the hazard. Upon issuance of this order, the department shall fix a place and time, not later than 72 hours thereafter, for a hearing to be held before the board. Not more than 24 hours after the commencement of the hearing and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition as that referred to in subsection (1) of this section, if the department finds that emissions from an operation are causing imminent danger to human health, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately without regard to 50-70-116. In this event, the requirements for hearing and affirmance, modification, or setting aside of orders provided in 50-70-116 apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of the declaration, whether the power is conferred by statute, constitutional provisions, or inheres in the office.

History: En. Sec. 11, Ch. 316, L. 1971; amd. Sec. 41, Ch. 349, L. 1974; R.C.M. 1947, 69-4216.

Cross-References

Disaster and emergency services, Title 10, ch. 3.

50-70-118. Penalty. (1) A person who violates this chapter relating to limitations of levels, concentrations, or quantities of emissions of various pollutants from a source determined to be necessary to prevent, abate, or control occupational diseases (unless in compliance with this chapter) is guilty of an offense and subject to a fine not to exceed $1,000. Each day of violation constitutes a separate offense.

(2) Proceedings under this section are not a bar to enforcement of this chapter or of rules or orders made under it by injunction or other appropriate remedy. The department may institute and maintain in the name of the state these enforcement proceedings.

(3) This chapter does not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally the right of a person to damage or other relief on account of injury to persons or property and to maintain an action or other appropriate proceeding.

(4) Fines collected, except those collected by a justice's court, shall be deposited to the state general fund.

History: En. Sec. 16, Ch. 316, L. 1971; amd. Sec. 44, Ch. 349, L. 1974; R.C.M. 1947, 69-4221; amd. Sec. 36, Ch. 557, L. 1987.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

CHAPTER 71

OCCUPATIONAL SAFETY

Part 1 — General Provisions

50-71-101. Short title.
50-71-102. Definitions.
50-71-103. Public contractors subject to chapter.
50-71-104. Effect on existing structures and equipment.
50-71-105. Qualifications of safety bureau chief.
50-71-106. Administrative powers and duties of department.
50-71-107. General research and review powers of department.
50-71-108. Power to appoint advisers.
50-71-109. Duties of department regarding occupational health hazards.
50-71-110. Violation of safety provision a misdemeanor.

Part 2 — Duties of Employer and Employee

50-71-201. Employer to provide safe workplace and to purchase, furnish, and require use of health and safety items — safe practices.
50-71-202. Employer to provide and maintain safe place of employment.
50-71-203. Removal of or refusal to use health and safety items prohibited.

Part 3 — Safety Rules and Orders

50-71-301. Department's power to prescribe safety devices and fix and order safety standards.
50-71-302. Notice of hearing on rules and codes.
50-71-303. Procedure to compel testimony or production of evidence.
50-71-304 through 50-71-310 reserved.
50-71-311. Safety codes authorized.
50-71-312. Codes to be consistent with other safety codes.
50-71-313. Effective date of codes.
50-71-314. Codes to be published.
50-71-315. Variations to code.
50-71-316. Assistance in compliance.

50-71-317 through 50-71-320 reserved.
50-71-321. Periodic inspections.
50-71-322. Procedure for worker to report safety violation.
50-71-323. Order directing additions, repairs, and improvements.
50-71-324. Time allowed for compliance with order.
50-71-325. Department authorized to prohibit further use of equipment constituting violation.
50-71-326. Injunction authorized.
50-71-327. Department authorized to order closure or cessation of work.
50-71-328 through 50-71-330 reserved.
50-71-331. Right to apply for rehearing.
50-71-332. Application for rehearing.
50-71-333. Disposition of application for rehearing.
50-71-334. Judicial review.

Part 1

General Provisions

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Employee and Community Hazardous Chemical Information Act, Title 50, ch. 78.

50-71-101. Short title. This chapter may be cited as the "Montana Safety Act".

History: En. Sec. 1, Ch. 341, L. 1969; R.C.M. 1947, 41-1708.

50-71-102. Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Amendment" means such modification or change in a code as shall be intended to be of universal or general application.

(2) "Code" means a standard body of rules for safety formulated, adopted, and issued by the department under the provisions of this chapter.

(3) "Department" means the department of labor and industry.

(4) "Employee" and "worker" are defined as in 39-71-118.

(5) "Employer" is defined as in 39-71-117.

(6) "Variation" means a special, limited modification or change in the code which is applicable only to the particular place of employment of the employer or person petitioning for such modification or change.

History: En. Sec. 2, Ch. 341, L. 1969; amd. Sec. 1, Ch. 182, L. 1975; R.C.M. 1946, 41-1709; amd. Sec. 48, Ch. 613, L. 1989.

50-71-103. Public contractors subject to chapter. Every contractor performing services for the state or any political subdivision thereof shall be required to comply with the safety rules, codes, and provisions of this chapter as a part of his contract.

History: En. Sec. 24, Ch. 341, L. 1969; R.C.M. 1947, 41-1731.

50-71-104. Effect on existing structures and equipment. Nothing contained in this chapter shall prevent the use of existing buildings, structures, and equipment during their lifetime when they are maintained in good condition, are properly safeguarded, and conform to the applicable safety standards required by Montana safety codes effective prior to July 1, 1969, provided that replacements and alterations shall conform to all provisions of this chapter.

History: En. Sec. 25, Ch. 341, L. 1969; R.C.M. 1947, 41-1732.

50-71-105. Qualifications of safety bureau chief. The safety bureau chief shall be a person with at least 2 years' experience or training in the field of industrial safety.

History: En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part).

50-71-106. Administrative powers and duties of department. In the administration of this chapter, the department:

(1) is vested with full power and jurisdiction over and shall have such supervision of every employment and place of employment in this state as may be necessary to enforce and administer all laws and all lawful orders requiring such employment and places of employment to be safe and requiring the protection of the life and safety of every employee in such employment or place of employment;

(2) shall carry out the provisions of this chapter;

(3) may adopt and enforce all necessary and reasonable rules and provisions for the purpose of carrying this chapter into effect and in reference to the investigation of all violations of this chapter and fix and set the time and place for all hearings which may be necessary or expedient for the purpose of carrying the provisions of this chapter into effect;

(4) may on its own motion or at the request of others subpoena witnesses, administer oaths, take depositions, fix the fees and mileage of witnesses, and compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony in any inquiry, investigation, hearing, or proceeding in any part of this state, and the department shall provide for defraying the expenses thereof.

History: En. Sec. 6, Ch. 341, L. 1969; amd. Sec. 2, Ch. 182, L. 1975; R.C.M. 1947, 41-1713(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-71-107. General research and review powers of department. The department may develop greater knowledge and interest in the causes and prevention of industrial accidents, occupational diseases, and related subjects through:

(1) research, conferences, lectures, and uses of public communications media;

(2) collection and dissemination of accident statistics; and

(3) development of staff competent in the review of safety codes.

History: **En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(1); amd. Sec. 64, Ch. 613, L. 1989.**

50-71-108. Power to appoint advisers. The department may appoint advisers who shall be compensated by the department if necessary and who shall assist the department in establishing standards of safety. The department may adopt and incorporate in its orders such safety recommendations as it may receive from such advisers.

History: **En. Sec. 22, Ch. 341, L. 1969; amd. Sec. 18, Ch. 182, L. 1975; R.C.M. 1947, 41-1729(2); amd. Sec. 64, Ch. 613, L. 1989.**

50-71-109. Duties of department regarding occupational health hazards. The department shall report occupational health hazards discovered in its investigations and inspection of places of employment to the department of health and environmental sciences and shall cooperate with the department in carrying out its duties as specified in chapter 70 of this title.

History: **En. Sec. 26, Ch. 341, L. 1969; amd. Sec. 19, Ch. 182, L. 1975; R.C.M. 1947, 41-1733; amd. Sec. 64, Ch. 613, L. 1989.**

50-71-110. Violation of safety provision a misdemeanor. In addition to all other penalties herein provided, every employer, worker, or other person who either individually or acting as an officer, agent, or employee of a corporation or other person violates any safety provision of this chapter or who directly or indirectly knowingly induces another to do so is guilty of a misdemeanor.

History: **En. Sec. 23, Ch. 341, L. 1969; R.C.M. 1947, 41-1730.**

Cross-References

Penalty when none specified, 46-18-212.

Part 2

Duties of Employer and Employee

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-71-201. Employer to provide safe workplace and to purchase, furnish, and require use of health and safety items — safe practices. Each employer shall:

(1) furnish a place of employment that is safe for each of his employees;

(2) with the exception of footwear, purchase, furnish, and require the use of health and safety devices, safeguards, protective safety clothing, or other health and safety items, including but not limited to air masks, hardhats, and protective gloves, that may be required by state or federal law, the employer, or the terms of an employment contract, unless the terms of a collective bargaining agreement provide otherwise;

(3) adopt and use practices, means, methods, operations, and processes that are reasonably adequate to render the place of employment safe; and

(4) do any other thing reasonably necessary to protect the life, health, and safety of his employees.

History: En. Sec. 3, Ch. 341, L. 1969; R.C.M. 1947, 41-1710; amd. Sec. 1, Ch. 298, L. 1991.

Compiler's Comments

1991 Amendment: In (2) substituted language requiring employer to purchase and furnish safety clothing and health and safety items other than footwear for "furnish and use and require the use of such safety devices and safeguards"; in (4), after "life", inserted "health"; and made minor changes in style.

50-71-202. Employer to provide and maintain safe place of employment. (1) An employer who is the owner or lessee of any real property in this state shall not construct or cause to be constructed or maintained any place of employment that is unsafe.

(2) Every employer who is the owner of a place of employment or lessee thereof shall repair and maintain the same as to render it safe.

History: En. Sec. 4, Ch. 341, L. 1969; R.C.M. 1947, 41-1711.

50-71-203. Removal of or refusal to use health and safety items prohibited. A person may not:

(1) remove, displace, damage, destroy, carry off, or refuse to use any health and safety device, safeguard, protective clothing, or other health and safety item furnished for his use by his employer;

(2) interfere with the use of any required health and safety device, safeguard, protective clothing, or other health and safety item by any other person;

(3) interfere with the use of a method or process adopted for the protection of an employee in the place of employment; or

(4) fail to do any other thing reasonably necessary to protect the life, health, and safety of employees.

History: En. Sec. 5, Ch. 341, L. 1969; R.C.M. 1947, 41-1712; amd. Sec. 2, Ch. 298, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "any", inserted "health and", after "safeguard" inserted "protective clothing, or other health and safety item", and after "use" substituted "by his employer" for "in any employment or place of employment"; in (2), after "use", inserted "of any required health and safety device, safeguard, protective clothing, or other health and safety item"; in (4), after "life", inserted "health"; and made minor changes in style.

Part 3

Safety Rules and Orders

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-71-301. Department's power to prescribe safety devices and fix and order safety standards. The department may, after hearing had upon its own motion or upon complaint, by safety orders, rules, or otherwise:

(1) declare and prescribe what safety devices, safeguards, or other means or methods of protection are well adapted to render the employees of every employment and place of employment safe as required by law;

(2) fix reasonable standards and prescribe, modify, and enforce such reasonable orders for the adoption, installation, use, maintenance, and operation of safety devices, safeguards, and other means or methods of protection to be as nearly uniform as possible as may be necessary to carry out all laws and lawful orders relative to the protection of the life and safety of the employees and places of employment;

(3) fix and order such reasonable standards for the construction, repair, and maintenance of places of employment and equipment as shall render them safe;

(4) require the performance of any other act which the protection of the life and safety of employees in employments and places of employment may demand.

History: En. Sec. 8, Ch. 341, L. 1969; amd. Sec. 4, Ch. 182, L. 1975; R.C.M. 1947, 41-1715; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-71-302. Notice of hearing on rules and codes. Upon the fixing of a time and place for the holding of a public hearing for the purpose of considering and issuing rules and codes as authorized in this chapter, the department shall cause a notice of the hearing to be published in one or more daily newspapers of general circulation published in this state and in such other papers of general circulation in this state as the department may deem expedient. The notice shall contain a brief statement of the time, place, and purpose of the hearing. No defect or inaccuracy in the notice or in the publication thereof shall invalidate any rule or code issued or adopted by the department after the hearing.

History: En. Sec. 9, Ch. 341, L. 1969; amd. Sec. 5, Ch. 182, L. 1975; R.C.M. 1947, 41-1716; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-71-303. Procedure to compel testimony or production of evidence. (1) The department or any member thereof before whom testimony is to be given or produced, in the case of refusal of any witness to attend or testify or produce any papers required by such subpoena, may in applying to the district court in and for the county in which the proceeding is pending show that the witness has been subpoenaed in the manner prescribed and the witness has failed or refused to attend or produce the papers required by the subpoena or has refused to answer questions propounded to him in the course of such proceeding and ask the court to compel the witness to attend and testify or produce such papers before the department.

(2) The court, upon such application, shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court then and there to show cause why the witness has not attended and testified or produced the papers before the department or any member thereof.

(3) A copy of the order shall be served upon the witness.

(4) If it is apparent to the court that the subpoena was regularly issued by the department or member thereof, the court thereupon shall enter an order that the witness appear before the department or member thereof at a time and place to be fixed in such order and testify and produce the required papers, and upon failure to obey the order, the witness shall be dealt with as for contempt of court.

History: En. Sec. 7, Ch. 341, L. 1969; amd. Sec. 3, Ch. 182, L. 1975; R.C.M. 1947, 41-1714; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-71-304 through 50-71-310 reserved.

50-71-311. Safety codes authorized. (1) The department may adopt, amend, repeal, and enforce rules for the prevention of accidents to be known as "safety codes" in every employment and place of employment, including the repair and maintenance of such places of employment, to render them safe.

(2) In the performance of its duties, the department may appoint advisory committees to deal with specified industries composed of equal numbers of employers and employees and others to suggest safety codes or amendments thereto.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

50-71-312. Codes to be consistent with other safety codes. (1) All such safety codes and rules shall, when adopted, be not inconsistent with the then-existing widely accepted codes of such engineering bodies as the American society of mechanical engineers, the American standards association, the American society of safety engineers, the United States of America standards institute, the national fire protection association and, in addition, agencies of the federal government with responsibilities for administering worker safety programs and other accepted codes.

(2) Any amendments made to such codes by the department shall be such that, when amended, such code shall be consistent with the widely accepted safety codes as then existing.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part); amd. Sec. 64, Ch. 613, L. 1989.

50-71-313. Effective date of codes. All codes and all amendments thereto and repeals thereof shall take effect 30 days after certified copies thereof shall be filed in the office of the secretary of state.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(part).

Cross-References

Secretary of State, Title 2, ch. 15, part 4.

50-71-314. Codes to be published. Every code adopted and every amendment or repeal thereof shall be published in such manner as the department may determine. A printed list of all titles of all codes including amendments thereof issued and adopted by the department under the provisions of this chapter, together with the dates of adoption thereof, shall be published from time to time.

History: En. Sec. 20, Ch. 341, L. 1969; amd. Sec. 16, Ch. 182, L. 1975; R.C.M. 1947, 41-1727(2); amd. Sec. 64, Ch. 613, L. 1989.

50-71-315. Variations to code. (1) In case of practical difficulties, the department may grant variations from particular provisions of the code and permit the use of other or different devices or methods. However, such variations shall be granted only when it is clear that the reasonable safety of the workers in the plant or place of employment is not thereby endangered.

(2) In any case where the department shall decline or refuse to grant any request for variations on the ground that the safety of the workers involved would be endangered, the employer may request a rehearing as specified in this chapter.

(3) A properly indexed record of all variations made shall be kept in the office of the department and be open to public inspection.

History: En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part); amd. Sec. 64, Ch. 613, L. 1989.

50-71-316. Assistance in compliance. Any employer may consult with the department for advice and assistance in complying with the provisions of this chapter or any codes adopted hereunder.

History: En. Sec. 21, Ch. 341, L. 1969; amd. Sec. 17, Ch. 182, L. 1975; R.C.M. 1947, 41-1728(part); amd. Sec. 64, Ch. 613, L. 1989.

50-71-317 through 50-71-320 reserved.

50-71-321. Periodic inspections. (1) The department shall inspect from time to time all the places of employment defined in the Montana Workers' Compensation Act as being hazardous and the machinery and appliances therein contained for the purpose of determining whether they conform to law.

(2) A report of such periodic inspection shall be filed in the office of the department and a copy thereof given the employer. Such report shall not be open to public inspection or made public except on order of the department or by the department in the course of a hearing or proceeding.

History: En. Sec. 18, Ch. 341, L. 1969; amd. Sec. 14, Ch. 182, L. 1975; R.C.M. 1947, 41-1725; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Workers' compensation, Title 39, ch. 71.

50-71-322. Procedure for worker to report safety violation. (1) A worker shall notify the worker's employer of any violation of law or regulation pertaining to safety of places of employment when the violation comes to the knowledge of the worker.

(2) If the employer fails to remedy the violation, the worker may complain in writing to the department of the violation.

(3) Upon receiving the complaint, the department shall forthwith inquire or make an inspection as to the safety of the place of employment. A copy of the report of inspection shall be given to the complainant.

History: En. Sec. 19, Ch. 341, L. 1969; amd. Sec. 15, Ch. 182, L. 1975; R.C.M. 1947, 41-1726; amd. Sec. 64, Ch. 613, L. 1989.

50-71-323. Order directing additions, repairs, and improvements. (1) Whenever the department, after a hearing had upon its own motion or upon complaint, finds that an employment or place of employment is not safe or that the practices or methods or operations or processes employed or used in connection therewith are unsafe or do not afford adequate protection to the life and safety of the employees in such employments and place of employment, the department shall make and enter and serve such order relative thereto as may be necessary to render such employment or place of employment safe and protect the life and safety of employees in such employment and places of employment.

(2) The department may in the order direct that such additions, repairs, improvements, or changes be made and such safety devices and safeguards be furnished, provided, and used as are reasonably required to render such employment or places of employment safe in the manner and within the time specified in the order.

History: En. Sec. 10, Ch. 341, L. 1969; amd. Sec. 6, Ch. 182, L. 1975; R.C.M. 1947, 41-1717; amd. Sec. 64, Ch. 613, L. 1989.

50-71-324. Time allowed for compliance with order. The department shall grant such time as may be reasonably necessary for compliance with any order, and any person affected by the order may petition the department for an extension of time, which the department shall grant if it finds the extension of time necessary.

History: En. Sec. 12, Ch. 341, L. 1969; amd. Sec. 8, Ch. 182, L. 1975; R.C.M. 1947, 41-1719; amd. Sec. 64, Ch. 613, L. 1989.

50-71-325. Department authorized to prohibit further use of equipment constituting violation. (1) The department, upon finding any violation of any duly adopted safety code, order, or rule involving failure to install or maintain any safety appliance, device, or safeguard required by such safety order, code, or rule, may prohibit the further use of the machine, equipment, or apparatus constituting such violation and, when such use is prohibited, shall post notice in an appropriate place in plain view of any person likely to use the same calling attention to the unsafe condition, defect, or lack of safeguard and the fact that the further use thereof is prohibited.

(2) The notice required by subsection (1) of this section shall not be removed until the required safety appliance, device, or safeguard complies with the requirement of the safety order or safety code.

(3) Every person who, after the notice required by subsection (1) of this section is posted as provided in that subsection, uses or operates any place of employment, machine, device, apparatus, or equipment referred to in subsection (1) of this section before it is made safe and the required safeguards or safety appliances or devices are provided or who defaces or destroys or removes any notice required by subsection (1) of this section without the authority of the department or who fails or refuses to file a report of accident as required by 39-71-307(1) is guilty of a misdemeanor and, in addition to the punishment provided for misdemeanors, is subject to a civil penalty in an amount of not more than $1,000. This civil penalty may be imposed and collected by the department in an action brought in the name of the state in the county in which the employer resides or in which he employs workers. Any penalty collected under this subsection shall be paid into the department's state special revenue account.

(4) Any person aggrieved by an order prohibiting the use of the machine, equipment, apparatus, or place of employment as provided for in this section may request a hearing before the department within 20 days after entry of such order. The department shall then affirm, modify, or revoke the order, and all procedures of this chapter relative to entry of orders, rehearing, and appeal shall apply.

History: En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(1) thru (4); amd. Sec. 23, Ch. 37, L. 1979; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

50-71-326. Injunction authorized. In addition to all other remedies provided in this chapter, the department may bring an action to enjoin any violation of any duly adopted safety order, code, or rule.

History: En. Sec. 11, Ch. 341, L. 1969; amd. Sec. 7, Ch. 182, L. 1975; R.C.M. 1947, 41-1718(5); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

50-71-327. Department authorized to order closure or cessation of work. (1) The department may order any place of employment closed or the work therein to cease if it is found that the place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers employed therein. Any such order of closure or for cessation of work shall be expressly limited to only that portion of the plant, installation, or facility as is directly and immediately affected by the unsafe condition constituting an immediate menace to the life and safety of the workers employed therein.

(2) Upon issuance of any such order, the department shall fix a place and time not later than 24 hours thereafter for a hearing to be held before the department. Not more than 24 hours after the commencement of the hearing

and without adjournment thereof, the department shall affirm, modify, or set aside the order.

(3) Nothing in this section shall empower the department to determine that any employment or place of employment is in an unsafe condition on the basis of the number or qualifications of employees operating such employment or place of employment unless a specific rule adopted after public hearing is violated. Provided that, for those employments or places of employment for which no code has been adopted and where it is found by the department that such place of employment is in such an unsafe condition as to constitute an immediate menace to the life or safety of the workers there employed, the department may order that portion of the plant, installation, or facility as is directly and immediately affected by such unsafe condition closed for a period not to exceed 4 hours unless such period be extended by order of the department.

History: En. Sec. 13, Ch. 341, L. 1969; amd. Sec. 9, Ch. 182, L. 1975; R.C.M. 1947, 41-1720; amd. Sec. 64, Ch. 613, L. 1989.

50-71-328 through 50-71-330 reserved.

50-71-331. Right to apply for rehearing. Any party aggrieved directly or indirectly by any final order, decision, or rule of the department made or entered pursuant to this chapter may apply to the department, within 20 days after the order of the department, for rehearing in respect to any matters determined or covered by such final order, decision, or rule and specified in the application for hearing within the time and in the manner prescribed in this chapter.

History: En. Sec. 15, Ch. 341, L. 1969; amd. Sec. 11, Ch. 182, L. 1975; R.C.M. 1947, 41-1722; amd. Sec. 64, Ch. 613, L. 1989.

50-71-332. Application for rehearing. (1) The application for rehearing shall set forth specifically and in full detail the grounds upon which the applicant considers the final order, decision, or rule is unjust or unlawful and every issue to be considered by the department.

(2) The applicant for rehearing shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matters upon which rehearing is sought other than those set forth in the application.

(3) A copy of the application for rehearing shall be served immediately on all adverse parties, who may file an answer thereto within 10 days after being served.

(4) If there are no adverse parties, the application may be heard ex parte or the department may require the application for rehearing to be served on such parties as may be designated by the department.

History: En. Sec. 16, Ch. 341, L. 1969; amd. Sec. 12, Ch. 182, L. 1975; R.C.M. 1947, 41-1723; amd. Sec. 64, Ch. 613, L. 1989.

50-71-333. Disposition of application for rehearing. (1) Upon the filing of the application for rehearing, if the issues raised thereby have theretofore been adequately considered by the department, it may determine the same by confirming without hearing its previous determination or, if a rehearing is necessary to determine one or more of the issues raised, the department shall order a rehearing thereon and consider and determine the matters raised by such application.

(2) Notice of the time and place of the rehearing shall be given to the applicant, the adverse parties, and such other persons as the department may order.

(3) If, after the rehearing and the consideration of all the facts, including those arising since the making of the order or decision involved, the department shall be of the opinion that all or any part of the original order or decision is in any respect unjust or unwarranted or should be changed, the department shall abrogate, change, or modify the same.

(4) An order or decision made after the rehearing abrogating, changing, or modifying the original order or decision shall have the same force and effect as an original order or decision but shall not affect any right or the enforcement of any right arising from or by virtue of the original order or decision unless so ordered by the department.

(5) An application for rehearing is considered denied by the department unless it has been acted upon within 30 days from the date of filing; provided that the department may, upon good cause being shown therefor, extend the time within which it may act upon an application for rehearing for not exceeding an additional 30 days.

History: En. Sec. 17, Ch. 341, L. 1969; amd. Sec. 13, Ch. 182, L. 1975; R.C.M. 1947, 41-1724; amd. Sec. 64, Ch. 613, L. 1989.

50-71-334. Judicial review. (1) The orders of the department, its rules, findings, and decisions made and entered under the provisions of this chapter may be reviewed by the courts within the time and in the manner specified in this section and not otherwise.

(2) Within 30 days after an application for rehearing is denied or, if the application is granted, within 30 days after rendition of the decision on the rehearing, any party affected thereby may appeal to the district court for the county in which is situated the place of employment complained of for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined.

(3) To give the district court jurisdiction, it is sufficient that a notice be filed with the clerk of the court to the effect that an appeal is taken to the district court from the order or decision of the department and describing the order or decision sufficiently for purposes of identification. The notice shall be signed by the party appealing or his attorney, and a copy thereof shall be served by certified mail upon the department.

(4) Within 10 days after the receipt of the notice, the department shall file with the clerk of court the record of proceedings before the department, including a transcript of all the evidence adduced upon the hearing and any rehearing before the department. The district court, on application for good cause shown, may extend the time within which the department shall file the record, transcript, and evidence.

(5) The cause shall be tried in the same manner as a civil action, provided that no new or additional evidence may be introduced in the court, but the cause shall be heard on the record to the court as certified to it by the department.

(6) The appeal shall not be extended further than to determine whether or not:

(a) the department acted without or in excess of its powers or in violation of the law;

(b) the order or decision was procured by fraud;

(c) the order, decision, or rule is unreasonable;

(d) if findings of fact are made, the finding of fact supports the order or decision under review.

(7) An appeal may be taken from the decree of the district court to the supreme court as in all other civil cases.

History: En. Sec. 14, Ch. 341, L. 1969; amd. Sec. 10, Ch. 182, L. 1975; R.C.M. 1947, 41-1721; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

CHAPTER 72

SAFETY IN MINES OTHER THAN COAL MINES

Part 1 — General Provisions

50-72-101. Applicability of chapter.
50-72-102. Definitions.
50-72-103. Injunctions and other civil relief authorized.
50-72-104. Violations a misdemeanor.

Part 2 — Inspections and Investigations

50-72-201. Inspectors.
50-72-202. Inspections and investigations authorized.
50-72-203. Inspectors and investigators to have free access to mines.
50-72-204. Debarment of persons from mine when death or serious injury likely.
50-72-205. Procedure when noncompliance not likely to cause death or serious injury.
50-72-206. Requirements as to findings, notices, and orders.
50-72-207. Notice or order subject to annulment, cancellation, or revision.
50-72-208. Order subject to review.
50-72-209. Right to hearing.
50-72-210. Actions or decisions under part to be taken as rapidly as possible.

Chapter Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Part 1

General Provisions

50-72-101. Applicability of chapter. This chapter shall apply to all mines (except coal and lignite) and individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines in this state. These individuals, owners, lessors, lessees, agents, partnerships, corporations, managers, operators, or employers operating any surface or underground metal or nonmetallic mines (excluding coal and lignite) shall report the same to the department, state the name of the mine, the location of the same, the name of the company, person, or persons owning or operating the same, post-office address, and number of persons employed.

History: En. Sec. 6, Ch. 98, L. 1903; re-en. Sec. 1720, Rev. C. 1907; re-en. Sec. 3425, R.C.M. 1921; re-en. Sec. 3425, R.C.M. 1935; amd. Sec. 3, Ch. 310, L. 1971; amd. Sec. 22, Ch. 182, L. 1975; R.C.M. 1947, 50-108; amd. Sec. 64, Ch. 613, L. 1989.

50-72-102. Definitions. (1) "Authorized representative" means mine inspector or any other person employed or authorized by the department to perform any and all duties under this chapter.

(2) "Corporation" means a body formed and authorized by law to act as a single person although constituted by one or more persons and legally endowed with various rights and duties, including the capacity of succession.

(3) "Department" means the department of labor and industry.

(4) "Employee" means every person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as hereinafter defined, in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written, whether lawfully or unlawfully employed and whether the employment is casual or otherwise.

(5) "Employer" means every person, firm, partnership, corporation, or association, including an independent contractor, who has any person in service in or about any mine, mill, smelter, excavation, or quarry under any appointment or contract of hire, express or implied, oral or written.

(6) "Inspector" means a person employed by the department to inspect metallic and nonmetallic mines, mills, smelters, or quarries as provided in this chapter.

(7) "Mine" means any mine or excavation when clay, metallic ore, mineral, gypsum, or rock is dug or mined, whether on surface or underground, where metal-bearing ores or nonmetallic mineral commodities (exclusive of coal or lignite) are dug or mined whether at the surface or underground.

(8) "Notice" means a written notice, work order, or correction notice issued by an authorized representative of the department, which notice specifies a violation and directs or recommends corrective measures and may specify a definite date or time in which to abate said violation.

(9) "Occupational health" means any of those health conditions that occur as a result of employment in a mine.

(10) "Order" means and includes any decision, rule, regulation, direction, requirement, or standard set, adopted, or issued by the department or any other determination or decision made by the department.

History: En. 50-119 by Sec. 5, Ch. 310, L. 1971; amd. Sec. 24, Ch. 182, L. 1975; R.C.M. 1947, 50-119; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Workers' compensation, Title 39, ch. 71.

50-72-103. Injunctions and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the department in the district court for the county in which the mine in question is located or in which the mine operator has its principal office whenever an operator:

(1) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(2) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the department to any mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(5) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(a); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

50-72-104. Violations a misdemeanor. (1) Any person who knowingly:

(a) violates or fails or refuses to comply with any order, rule, or regulation issued under this chapter;

(b) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the department to any mine which is subject to this chapter;

(d) refuses to permit the inspection or investigation of any mine which is subject to this chapter or an accident, injury, or occupational disease occurring in or connected with such a mine; or

(e) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter, shall be guilty of a misdemeanor and shall upon conviction thereof be punished for each such offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In any instance in which such offense is committed by a corporation, any officer or authorized representative of such corporation who knowingly permits such offense to be committed shall upon conviction be subject to the same fine or imprisonment, or both.

History: En. Sec. 4, Ch. 72, L. 1911; re-en. Sec. 3435, R.C.M. 1921; re-en. Sec. 3435, R.C.M. 1935; amd. Sec. 4, Ch. 310, L. 1971; amd. Sec. 23, Ch. 182, L. 1975; R.C.M. 1947, 50-118(b); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Part 2

Inspections and Investigations

50-72-201. Inspectors. The department shall employ an adequate number of qualified metal and nonmetallic mine inspectors necessary for the enforcement of this chapter and shall prescribe their powers, duties, and responsibilities.

History: En. Sec. 1, p. 109, L. 1897; re-en. Sec. 1711, Rev. C. 1907; amd. Sec. 1, Ch. 71, L. 1909; amd. Sec. 1, Ch. 22, L. 1921; re-en. Sec. 3418, R.C.M. 1921; re-en. Sec. 3418, R.C.M. 1935; amd. Sec. 1, Ch. 310, L. 1971; amd. Sec. 20, Ch. 182, L. 1975; R.C.M. 1947, 50-101; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Open mine shaft — criminal penalty, 45-8-113.

50-72-202. Inspections and investigations authorized. The department is authorized at any time to cause to be made such inspections and investigations as it shall deem necessary in surface and underground mines which are subject to this chapter:

(1) for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in such mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein; and

(2) for the purpose of determining whether or not there is compliance with a health and safety standard or order issued under this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(a); amd. Sec. 64, Ch. 613, L. 1989.

50-72-203. Inspectors and investigators to have free access to mines. For the purpose of making any inspection or investigation authorized by this chapter, authorized representatives of the department shall have the right of entry to, upon, or through any mine which is subject to this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(b); amd. Sec. 64, Ch. 613, L. 1989.

50-72-204. Debarment of persons from mine when death or serious injury likely. If, upon any inspection of a mine which is subject to this chapter, authorized representatives of the department find that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated, such representatives shall determine the extent of the area of such mine throughout which the danger exists and thereupon issue an order requiring the operator of such mine to cause all persons to be withdrawn from and to be debarred from entering such area, except the persons designated below whose presence in such area is necessary to eliminate the danger described in such order:

(1) any person whose presence in such area is necessary in the judgment of the operator of the mine to eliminate the danger described in the order;

(2) any public official whose official duties require him to enter such area;

(3) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(c); amd. Sec. 64, Ch. 613, L. 1989.

50-72-205. Procedure when noncompliance not likely to cause death or serious injury. (1) If, upon any inspection or investigation, an authorized representative finds that there has been a failure to comply with a mandatory standard which is applicable to such mine, but that such failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in such mine immediately or before the imminence of such danger can be eliminated, he shall find what would be a reasonable period of time within which such violation should be totally abated and thereupon issue a notice fixing a reasonable time for the abatement of the violation.

(2) If, upon the expiration of such period of time as originally fixed or extended, the authorized representative finds that such violation has not been totally abated and if he also finds that such period of time should not be further extended, he shall also find the extent of the area which is affected by such violation. Thereupon, the department shall make an order requiring the operator of such mine to cause all persons in such area to be withdrawn from and to be debarred from entering such area, excepting the following persons whose presence in such area is necessary to abate the violation described in the order:

(a) any person whose presence in such area is necessary in the judgment of the operator of the mine to abate the violation described in the order;

(b) any public official whose official duties require him to enter such area;

(c) any legal or technical consultant or any representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in such area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions described in the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(d); amd. Sec. 64, Ch. 613, L. 1989.

50-72-206. Requirements as to findings, notices, and orders. (1) Findings and orders issued pursuant to this part shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and debarred.

(2) Each finding made and notice or order issued under this part shall be given promptly to the operator of the mine to which it pertains by the person making such finding or order, and all such findings, orders, and notices shall be in writing and shall be signed by the person making them.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part).

50-72-207. Notice or order subject to annulment, cancellation, or revision. A notice or order issued by an authorized representative pursuant to this part may be annulled, canceled, or revised by the authorized representative, and in case of a department order, the department may annul, cancel, or revise the order.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(part); amd. Sec. 64, Ch. 613, L. 1989.

50-72-208. Order subject to review. The order of the duly authorized representative of the department shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(g); amd. Sec. 64, Ch. 613, L. 1989.

50-72-209. Right to hearing. (1) An operator notified of an order made pursuant to 50-72-204 may apply to the department for a hearing, revision, or annulment of such order. Whenever the department after such a hearing, upon complaint or upon its own motion, finds that danger throughout the area of such mine as set out in such order existed at the time of making the inspection, it shall make an order denying a revision or annulment; but if it finds that such danger did not exist throughout the area of such mine, it shall make an order consistent with its findings revising or annulling the order under review.

(2) An operator notified of an order made pursuant to 50-72-205 may apply to the department for a hearing or revision of such order. If the department finds that there was no violation, it shall make an order annulling the order under review. If the department finds that there was such a violation, but such violation has since been abated, it shall make an order annulling the order under review. If the department finds that such violation was not totally abated, it shall make an order consistent with its findings.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(h), (i); amd. Sec. 64, Ch. 613, L. 1989.

50-72-210. Actions or decisions under part to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the department under this part, all actions which the department or its authorized representatives are required to take under this part shall be taken as rapidly as practical, consistent with adequate consideration of the issues involved.

History: En. Sec. 1, Ch. 98, L. 1903; re-en. Sec. 1713, Rev. C. 1907; re-en. Sec. 3419, R.C.M. 1921; re-en. Sec. 3419, R.C.M. 1935; amd. Sec. 2, Ch. 310, L. 1971; amd. Sec. 21, Ch. 182, L. 1975; R.C.M. 1947, 50-102(j); amd. Sec. 64, Ch. 613, L. 1989.

CHAPTER 73

SAFETY IN COAL MINES

Part 1 — General Provisions

50-73-101. Short title.
50-73-102. Definitions.
50-73-103. Department authorized to adopt rules.
50-73-104. Injunction and other civil relief authorized.
50-73-105. Violations a misdemeanor.

Part 2 — Maps, Surveys, and Boundary Lines

50-73-201. Operator to make map of coal mine.
50-73-202. Map of the surface.
50-73-203. Map of underground working.
50-73-204. Map for every seam.
50-73-205. Copies of maps for department.
50-73-206. Maps to be updated on basis of semiannual surveys.
50-73-207. Annual surveys in mines having only five men on shift.
50-73-208. Final survey and map update when mine abandoned or worked out.
50-73-209. Procedure when operator fails to furnish or update map.
50-73-210. Restrictions as to boundary lines.

Part 3 — Duties of Operator and Employees in Mine Operation

50-73-301. Operator to report amount of coal produced.
50-73-302. Hoisting — licensing of hoisting engineers.
50-73-303. Nonpermissible internal-combustion engines.
50-73-304. Owner to provide and maintain airways.
50-73-305. Specific prohibitions and safety precautions.
50-73-306. Operator to give notice of happening of certain occurrences.
50-73-307. Operator to make and preserve a record of all injuries.
50-73-308. Operator to notify miners' organization of mine fatality.

Part 4 — Inspections, Investigations, and Compliance

50-73-401. Coal mine inspector.
50-73-402. Department authorized to enter and inspect coal mines.
50-73-403. Department to give notice of inspection to be made on complaint.

50-73-404. Right of employees' representative and mine owner to accompany department during inspection.
50-73-405. Mine owner to furnish means necessary for inspection.
50-73-406. Minimum inspection intervals.
50-73-407. Department to give notice of violations and penalties therefor.
50-73-408. Procedure when notice of violations disregarded.
50-73-409. Department to post statement of conditions at some conspicuous location.
50-73-410. Department inspection upon advisement of accident, injury, or fatality.
50-73-411. Miners' organization authorized to investigate fatal accident.
50-73-412. Debarment of persons from mine when death or serious injury likely.
50-73-413. Procedure when noncompliance not likely to cause death or serious injury.
50-73-414. Requirements as to findings, notices, and orders.
50-73-415. Notice or order subject to amendment, cancellation, or revision.
50-73-416. Order subject to review.
50-73-417. Right to hearing.
50-73-418. Actions or decisions under chapter to be taken as rapidly as possible.

Part 1

General Provisions

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Coal mining and reclamation, Title 82, ch. 3 and 4.

50-73-101. Short title. This chapter shall be known and may be cited as the "Montana Coal Mining Code".

History: En. Sec. 1, Ch. 120, L. 1911; re-en. Sec. 3447, R.C.M. 1921; re-en. Sec. 3447, R.C.M. 1935; amd. Sec. 1, Ch. 267, L. 1974; R.C.M. 1947, 50-401.

50-73-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of labor and industry and the state coal mine inspectors employed by the department.

(2) "Excavations" and "workings" mean all parts of a mine excavated or being excavated, including shafts, slopes, tunnels, entries, rooms, and working places, whether abandoned or in use.

(3) "Gassy mine" means a mine is considered to be potentially gassy. The department may further define this term in its rules.

(4) "Mine" and "coal mine" mean all parts of the property of a mining plant under one management which contribute, directly or indirectly, to the mining or handling of coal.

(5) "Mine examiner" means a person charged with the examination of the condition of the mine before the miners are permitted to enter it and who is commonly known as the "fire boss".

(6) "Mine foreman" means a person who is charged with the general direction of the underground work or both the underground work and the

outside work of a coal mine and who is commonly known and designated as "mine boss".

(7) "Operator", as applied to the party in control of a mine under this chapter, means the person, firm, or body corporate which is the immediate proprietor as owner or lessee of the plant and, as such, is responsible for the condition and management thereof.

(8) "Shaft" means any vertical opening through the strata which is or may be used for the purpose of ventilation or escape or for hoisting or lowering of men or material in connection with the mining of coal.

(9) "Slope" and "drift" mean respectively an incline or horizontal way, opening, or tunnel to a seam of coal to be used for the same purpose as a shaft.

History: En. 50-401.1 by Sec. 2, Ch. 267, L. 1974; R.C.M. 1947, 50-401.1; amd. Sec. 109, Ch. 370, L. 1987; amd. Sec. 49, Ch. 613, L. 1989.

50-73-103. Department authorized to adopt rules. The department may adopt rules to carry out the provisions of this chapter and safety standards for all coal mines in this state.

History: En. 50-412.1 by Sec. 8, Ch. 267, L. 1974; R.C.M. 1947, 50-412.1; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-73-104. Injunction and other civil relief authorized. A civil action for preventive relief, including but not limited to an application for a permanent or temporary injunction, restraining order, or other appropriate order, may be instituted by the department in the district court for the county in which the mine in question is located or in which the mine operator has its principal office when an operator:

(1) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(2) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(3) refuses to admit an authorized representative of the department to a mine which is subject to this chapter;

(4) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(5) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter.

History: En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(1); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Injunctions, Title 27, ch. 19.

50-73-105. Violations a misdemeanor. (1) A person who knowingly:

(a) violates or fails or refuses to comply with an order, rule, or standard adopted under this chapter;

(b) interferes with, hinders, or delays the department or its authorized representatives in carrying out any duties under this chapter;

(c) refuses to admit an authorized representative of the department to a mine;

(d) refuses to permit the inspection or investigation of a mine or an accident, injury, or occupational disease occurring in or connected with a mine; or

(e) refuses to furnish the department any information or report requested by the department and which may reasonably be necessary to carry out the provisions of this chapter is guilty of a misdemeanor and shall be punished for each offense by a fine of not less than $100 or more than $3,000, by imprisonment in the county jail not exceeding 6 months, or both.

(2) In an instance in which the offense is committed by a corporation, an officer or authorized representative of the corporation who knowingly permits the offense to be committed is subject to the same fine or imprisonment, or both.

History: En. Sec. 50-481 by Sec. 32, Ch. 267, L. 1974; R.C.M. 1947, 50-481(2); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Part 2

Maps, Surveys, and Boundary Lines

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

50-73-201. Operator to make map of coal mine. Every operator of every coal mine in this state shall make or cause to be made an accurate map or plan of the mines, drawn to a scale of not less than 200 feet to 1 inch and as much larger as practicable, on which shall appear the name of the state, county, and township in which the mine is located, the designation of the mine, the name of the company or owner, the certificate of the certified engineer or surveyor as to the accuracy and date of the survey, the north point, and the scale to which the drawing is made.

History: En. Sec. 37, Ch. 120, L. 1911; re-en. Sec. 3479, R.C.M. 1921; re-en. Sec. 3479, R.C.M. 1935; amd. Sec. 9, Ch. 267, L. 1974; R.C.M. 1947, 50-428.

50-73-202. Map of the surface. Every map or plan or, at the option of the operator, a separate map shall show the surface boundary lines contiguous to the workings and pertaining to each mine, all section or quarter-section lines and corners, town lots and streets, the tracts and side tracts of all railroads, the location of all wagon roads, rivers, streams, ponds, buildings, landmarks, and principal objects on the surface within the boundary lines;

and in all cases, if of an underground mine, it shall be drawn on a transparency so that it can be laid upon the map of the underground workings and indicate the relative location of the lines and objects on the surface to the excavations of the mine.

History: En. Sec. 40, Ch. 120, L. 1911; re-en. Sec. 3482, R.C.M. 1921; re-en. Sec. 3482, R.C.M. 1935; amd. Sec. 12, Ch. 267, L. 1974; R.C.M. 1947, 50-431.

50-73-203. Map of underground working. For the underground working, the map shall show all power distribution and ventilation in mines and all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings; the location of the fan; the location of the permanent pumps, hauling engines, engine-planes, and fire walls; the location of any standing water which might prove a menace to life or danger to property from flood; and the line of any contiguous surface outcrop of the seam.

History: En. Sec. 38, Ch. 120, L. 1911; re-en. Sec. 3480, R.C.M. 1921; re-en. Sec. 3480, R.C.M. 1935; amd. Sec. 13, Ch. 185, L. 1949; amd. Sec. 10, Ch. 267, L. 1974; amd. Sec. 7, Ch. 39, L. 1977; R.C.M. 1947, 50-429.

50-73-204. Map for every seam. A separate and similar map for all active mining areas drawn to the same scale in all cases shall be made of every seam which shall be worked in any mine, and the maps of all seams shall show all shafts, drifts, tunnels, incline planes, or other passageways connecting them.

History: En. Sec. 39, Ch. 120, L. 1911; re-en. Sec. 3481, R.C.M. 1921; re-en. Sec. 3481, R.C.M. 1935; amd. Sec. 11, Ch. 267, L. 1974; R.C.M. 1947, 50-430.

50-73-205. Copies of maps for department. The original or true copies of all maps shall be kept in the office at the mine, and true copies shall also be furnished the department within 30 days after their completion. The maps delivered to the department shall become the property of the state. They shall be kept at the office of the department and be open to inspection by all persons interested in them. An examination shall only be made in the presence of a department inspector, and he shall not permit any copies of them to be made without the written consent of the operator or owner of the property, under penalty of removal from office.

History: En. Sec. 41, Ch. 120, L. 1911; re-en. Sec. 3483, R.C.M. 1921; re-en. Sec. 3483, R.C.M. 1935; amd. Sec. 13, Ch. 267, L. 1974; R.C.M. 1947, 50-432; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right to privacy, Art. II, sec. 10, Mont. Const.

50-73-206. Maps to be updated on basis of semiannual surveys. An extension of the last preceding survey of every mine in active operation shall be made once every 6 months, and the result of the survey, with the date, shall be promptly and accurately entered upon the original maps so as to show all changes in plan or new work in the mine and all extensions of the workings to the most advanced boundary of the workings which have been made since the preceding survey. The changes and extensions shall be entered on the copies of the maps of the department or new copies furnished it within 30 days after the last survey is made.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-207. Annual surveys in mines having only five men on shift. The department shall require an extension of the last preceding survey once every 12 months of every mine in active operation in which five men or less are employed on any one shift.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(2); amd. Sec. 64, Ch. 613, L. 1989.

50-73-208. Final survey and map update when mine abandoned or worked out. (1) When a coal mine is worked out, is about to be abandoned, or indefinitely closed, the operator shall make or cause to be made a final survey of all available parts of the mine, and the results shall be duly extended on all maps and copies of the mine to show all excavations and the most advanced workings of the mine and their exact relations to the boundary or section lines on the surface.

(2) The department may order a survey to be made of the workings of a mine which is about to be abandoned or of which it has reason to believe the maps are inaccurate whenever in its judgment the safety of the workers, the support of the surface, the conservation of the property, or the safety of an adjoining mine requires it. The survey shall be at the expense of the state.

History: En. Sec. 43, Ch. 120, L. 1911; re-en. Sec. 3485, R.C.M. 1921; re-en. Sec. 3485, R.C.M. 1935; amd. Sec. 15, Ch. 267, L. 1974; R.C.M. 1947, 50-434; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Coal mine reclamation, Title 82, ch. 4.
parts 1 and 2.

50-73-209. Procedure when operator fails to furnish or update map. When the operator of a mine neglects or refuses or for any cause not satisfactory to the department fails for a period of 3 months to furnish the department the map or plan of the mine or of the extension or a copy, the department may make or cause to be made an accurate map or plan of the mine at the expense of the owner or lessee, and the cost may be recovered from the owner, lessee, or operator in the same manner as other debts by suit in the name of the state.

History: En. Sec. 42, Ch. 120, L. 1911; re-en. Sec. 3484, R.C.M. 1921; re-en. Sec. 3484, R.C.M. 1935; amd. Sec. 14, Ch. 185, L. 1949; amd. Sec. 14, Ch. 267, L. 1974; R.C.M. 1947, 50-433(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-210. Restrictions as to boundary lines. In no case shall the workings of a coal mine be driven nearer than 50 feet to the boundary line of the coal rights pertaining to the mine, except for the purpose of establishing connecting workings between properties owned by the same person or an underground communication between contiguous mines as provided for elsewhere in rules adopted by the department.

History: En. 50-434.1 by Sec. 16, Ch. 267, L. 1974; R.C.M. 1947, 50-434.1; amd. Sec. 64, Ch. 613, L. 1989.

Part 3

Duties of Operator and Employees in Mine Operation

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Coal mining, Title 82, ch. 3.

50-73-301. Operator to report amount of coal produced. Within 15 days after the close of each calendar month, the operator of a coal mine shall report to the department the tons of coal produced each day during the preceding month.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-302. Hoisting — licensing of hoisting engineers. Hoisting of personnel and licensing of hoisting engineers shall be performed in mines under the provisions of the law and rules and standards adopted by the department.

History: En. 50-479 by Sec. 22, Ch. 267, L. 1974; R.C.M. 1947, 50-479; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Hoisting engines, Title 50, ch. 76.

50-73-303. Nonpermissible internal-combustion engines. Nonpermissible internal-combustion engines or other machinery which gives off noxious fumes may not be permitted underground in any coal mine.

History: En. 50-567.1 by Sec. 17, Ch. 267, L. 1974; R.C.M. 1947, 50-467.1.

50-73-304. Owner to provide and maintain airways. The owner, lessee, or operator of every coal mine shall provide and maintain airways of sufficient dimensions, and in no case shall the area of the aircourse be less than 25 square feet in mines operated in any underground system.

History: En. Sec. 69, Ch. 120, L. 1911; re-en. Sec. 3511, R.C.M. 1921; re-en. Sec. 3511, R.C.M. 1935; amd. Sec. 18, Ch. 267, L. 1974; R.C.M. 1947, 50-468.

50-73-305. Specific prohibitions and safety precautions. (1) A person may not enter a mine which is generating firedamp in great enough quantities to be detected by a safety lamp until the mine examiners make a report to the department.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person ordered to withdraw by the mine foreman or mine examiner from the mine on account

of the interruption of the ventilation may not reenter the mine until given permission to do so by the mine foreman.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement, change marks or dates on any caution board, erase or change the dates at room or entry face when made by the mine examiner, take for his use a life check not issued to him under rules adopted by the department, change the checks on cars, wrongfully check a car, or do any act with intent to defraud.

(5) A person may not take anything containing fire into an underground mine, except as provided for in rules adopted by the department.

(6) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, aircourse, brattice equipment, machinery, or livestock, obstruct or throw open any airway, handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it, endanger the miners or those working therein, disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery.

History: En. 50-476 by Sec. 19, Ch. 267, L. 1974; amd. Sec. 8, Ch. 39, L. 1977; R.C.M. 1947, 50-476; amd. Sec. 64, Ch. 613, L. 1989.

50-73-306. Operator to give notice of happening of certain occurrences. Immediate notice must be conveyed to the department by the operator interested:

(1) when an accident occurs whereby a person receives serious or fatal injury;

(2) when work is commenced to sink a shaft, slope, or drift either for hoisting or escape purposes;

(3) when there is intent to abandon a mine or to reopen an abandoned mine;

(4) upon the appearance of a large body of firedamp in a mine, whether accompanied by explosion or not, and upon the occurrence of a serious fire within the mine or on the surface around the mine;

(5) when the workings of a mine are approaching near an abandoned mine believed to contain accumulation of water or gas; or

(6) upon the accidental closing or intended abandonment of a regularly established passageway to an escape outlet.

History: En. 50-477 by Sec. 20, Ch. 267, L. 1974; R.C.M. 1947, 50-477(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Coal mine reclamation, Title 82, ch. 4, parts 1 and 2.

50-73-307. Operator to make and preserve a record of all injuries. Every operator of a coal mine or his agent shall make and preserve for the information of the department, upon uniform blanks furnished by the department, a record of all injuries sustained by any employees on the premises.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-308. Operator to notify miners' organization of mine fatality. The operator shall, upon being notified of a fatality in a coal mine, relay that information promptly to the district office of the miners' organization.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

Part 4

Inspections, Investigations, and Compliance

Part Cross-References

Workers' compensation, Title 39, ch. 71.

Occupational Disease Act of Montana, Title 39, ch. 72.

Silicosis benefits, Title 39, ch. 73.

Coal mining, Title 82, ch. 3.

50-73-401. Coal mine inspector. (1) The department shall employ an adequate number of qualified coal mine inspectors for the enforcement of this chapter and shall prescribe their duties.

(2) A person is not eligible to be a state coal mine inspector unless he is a citizen of the United States, a resident of this state, and has been actually employed in coal mining 5 years before his appointment.

(3) A state coal mine inspector may not act as agent for a corporation, superintendent, or manager of a mine and shall in no manner be in the employ of mining companies, nor shall he be interested in any way in coal mining operations, either as owner, lessee, or otherwise.

History: (1)En. Sec. 2, Ch. 120, L. 1911; amd. Sec. 1, Ch. 20, L. 1921; re-en. Sec. 3448, R.C.M. 1921; re-en. Sec. 3448, R.C.M. 1935; amd. Sec. 3, Ch. 267, L. 1974; Sec. 50-402, R.C.M. 1947; (2)En. Sec. 3, Ch. 120, L. 1911; re-en. Sec. 3449, R.C.M. 1921; re-en. Sec. 3449, R.C.M. 1935; amd. Sec. 1, Ch. 185, L. 1949; amd. Sec. 4, Ch. 267, L. 1974; Sec. 50-403, R.C.M. 1947; (3)En. Sec. 6, Ch. 120, L. 1911; re-en. Sec. 3451, R.C.M. 1921; re-en. Sec. 3451, R.C.M. 1935; amd. Sec. 6, Ch. 267, L. 1974; Sec. 50-405, R.C.M. 1947; R.C.M. 1947, 50-402, 50-403, 50-405; amd. Sec. 1, Ch. 639, L. 1983; amd. Sec. 64, Ch. 613, L. 1989.

50-73-402. Department authorized to enter and inspect coal mines. (1) The department may enter, inspect, and examine any coal mine or any shaft, drift, or slope in the process of sinking for the purpose of mining coal in this state and the workings and the machinery belonging thereto at all reasonable times either by day or night, but not so as to impede or obstruct the workings of the mine.

(2) The department may at any time perform such inspections and investigations as it considers necessary in surface and underground mines which are subject to this chapter for the purpose of obtaining, utilizing, and disseminating information relating to health and safety conditions in the mines, the causes of accidents involving bodily injury or loss of life, or the causes of occupational diseases originating therein and for the purpose of determining

whether there is compliance with a health and safety standard or order issued under this chapter.

(3) For the purpose of making an inspection or investigation authorized by this chapter, representatives of the department may enter, upon or through, any mine which is subject to this chapter.

History: (1)En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; Sec. 50-404, R.C.M. 1947; (2), (3)En. 50-480, 50-480.1 by Secs. 23, 24, Ch. 267, L. 1974; Secs. 50-480, 50-480.1, R.C.M. 1947; R.C.M. 1947, 50-404(1), 50-480, 50-480.1; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-73-403. Department to give notice of inspection to be made on complaint. If the department has in its possession any complaint to the effect that this chapter is being violated, it shall notify the employer and the employees that it is about to make an inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-404. Right of employees' representative and mine owner to accompany department during inspection. The employees' representative has the right to accompany the department in making an official mine inspection. The owner or operator has the right to personally accompany the department while inspecting his property or to designate someone to accompany the department.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-405. Mine owner to furnish means necessary for inspection. The owner, lessee, operator, superintendent, or mining boss of the mine is required to furnish the means necessary for the entry, inspection, examination, inquiry, and exit.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part).

50-73-406. Minimum inspection intervals. The department shall carefully examine all the coal mines in operation in this state at least every 3 months and more often if necessary to see that every precaution is taken to insure the safety of all workers that may be engaged in the coal mine. The department shall make a record of the visit, noting the time and the material circumstances of the inspection.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-407. Department to give notice of violations and penalties therefor. The department shall immediately notify the owner, lessee, superintendent, or mining boss of the discovery of any violation of the mining laws of this state and the penalty thereby imposed for those violations.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. See. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-408. Procedure when notice of violations disregarded. (1) If the notice provided for in 50-73-407 is disregarded, the department may stop immediately the working and operation of any mine or any part thereof where any dangerous or unlawful conditions are found.

(2) However, where conditions justify the department in so doing, it may grant a reasonable length of time for making repairs or for putting the mine in proper condition, but the number of workers employed in the mine or in the section of the mine involved shall be limited to those necessary to correct the unsafe condition.

(3) Where any stops or cessation of work is enforced, the department may thereafter allow the mine or part of a mine to be reopened when the dangerous or unlawful conditions existing there are removed or remedied so that they no longer exist.

History: En. Sec. 5, Ch. 120, L. 1911; re-en. Sec. 3450, R.C.M. 1921; re-en. Sec. 3450, R.C.M. 1935; amd. Sec. 1, Ch. 113, L. 1941; amd. Sec. 1, Ch. 38, L. 1945; amd. Sec. 2, Ch. 185, L. 1949; amd. Sec. 5, Ch. 267, L. 1974; R.C.M. 1947, 50-404(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-409. Department to post statement of conditions at some conspicuous location. The department shall post in some conspicuous location at each mine visited and inspected by it a plain statement of the conditions of the mine showing what in its judgment is necessary for the better protection of the lives and health of persons employed in the mine. The statement, signed by the department inspector, shall give the date of inspection. Where a local union has jurisdiction over the mine inspected, the department shall post three copies of the statement of conditions within 1 week after making the inspection. It shall also post a copy at the landing used by the workers stating what number of workers may be permitted to ride on the cage, car, or cars at one time.

History: En. Sec. 8, Ch. 120, L. 1911; re-en. Sec. 3453, R.C.M. 1921; re-en. Sec. 3453, R.C.M. 1935; amd. Sec. 3, Ch. 38, L. 1945; amd. Sec. 3, Ch. 185, L. 1949; amd. Sec. 7, Ch. 267, L. 1974; R.C.M. 1947, 50-407; amd. Sec. 64, Ch. 613, L. 1989.

50-73-410. Department inspection upon advisement of accident, injury, or fatality. (1) When advised by an operator of any accident in a coal mine involving loss of life or serious personal injury, the department shall, if it considers it necessary from the facts reported and in all cases of loss of life, immediately have an inspector go to the scene of the accident within 48 hours of notification.

(2) The department may also make any original or supplementary investigation which it considers necessary as to the nature and cause of an accident

and shall make a record of the circumstances and of the result of the investigations for its files.

(3) The inspection team shall include a department coal mine inspector, the employer or his designee, and a representative of the employees.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-411. Miners' organization authorized to investigate fatal accident. The representative of the miners' organization or some person delegated by him may enter any coal mine for the purpose of investigating the causes of a fatal accident.

History: En. 50-478 by Sec. 21, Ch. 267, L. 1974; R.C.M. 1947, 50-478(part).

50-73-412. Debarment of persons from mine when death or serious injury likely. If, upon an inspection of a mine, the department finds that the conditions or practices in the mine are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated, the department shall determine the extent of the area of the mine throughout which the danger exists and order the operator of the mine to have all persons withdrawn from and excluded from entering the area, except the persons designated below whose presence in the area is necessary to eliminate the danger described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to eliminate the danger;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make mine examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.2 by Sec. 25, Ch. 267, L. 1974; R.C.M. 1947, 50-480.2; amd. Sec. 64, Ch. 613, L. 1989.

50-73-413. Procedure when noncompliance not likely to cause death or serious injury. If upon an inspection or investigation the department finds that there has been a failure to comply with a mandatory standard which is applicable to the mine, but that the failure to comply has not created a danger that could reasonably be expected to cause death or serious physical harm in the mine immediately or before the imminence of the danger can be eliminated, it shall determine what would be a reasonable period of time within which the violation should be totally abated and issue a notice fixing a reasonable time for the abatement of the violation. If, upon the expiration of the period of time as originally fixed or extended, the department finds that the violation has not been totally abated and if it also finds that the period of time should not be further extended, it shall also find the extent of the area which is affected by the violation. The department shall order the operator of the mine to have all persons in the area to be withdrawn from and excluded from entering the area, excepting the following persons whose presence in the area is necessary to abate the violation described in the order:

(1) a person whose presence in the area is necessary in the judgment of the operator of the mine to abate the violation;

(2) a public official whose official duties require him to enter the area;

(3) a legal or technical consultant or a representative of the employees of the mine who is a person qualified to make examinations or is accompanied by such a person and whose presence in the area is necessary, in the judgment of the operator of the mine, for the proper investigation of the conditions in the area.

History: En. 50-480.3 by Sec. 26, Ch. 267, L. 1974; R.C.M. 1947, 50-480.3; amd. Sec. 64, Ch. 613, L. 1989.

50-73-414. Requirements as to findings, notices, and orders. (1) Findings and orders issued under this chapter shall contain a detailed description of the conditions or practices which cause and constitute a situation of imminent danger or a violation of a mandatory standard and a description of the area of the mine throughout which persons must be withdrawn and excluded.

(2) Each finding made and notice or order issued by the department shall be given promptly to the operator of the mine to which it pertains, and all the findings, orders, and notices shall be in writing and shall be signed by the department inspector making them.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-415. Notice or order subject to amendment, cancellation, or revision. A notice or order issued by the department under this chapter may be amended, canceled, or revised by the department.

History: En. 50-484.4 by Sec. 27, Ch. 267, L. 1974; R.C.M. 1947, 50-480.4(part); amd. Sec. 64, Ch. 613, L. 1989.

50-73-416. Order subject to review. The order of the department shall remain in effect but shall immediately be subject to review as provided in this chapter.

History: En. 50-480.5 by Sec. 28, Ch. 267, L. 1974; R.C.M. 1947, 50-480.5; amd. Sec. 64, Ch. 613, L. 1989.

50-73-417. Right to hearing. (1) An operator notified of an order made under 50-73-412 may apply to the department for a hearing, revision, or amendment of the order. When the department after a hearing upon complaint or upon its own motion finds that danger throughout the area of the mine as set out in the order existed at the time of making the inspection, it shall make an order denying a revision or amendment. However, if it finds that the danger did not exist throughout the area of the mine, it shall make an order consistent with its findings, revising or amending the order under review.

(2) An operator notified of an order made under 50-73-413, as amended, may apply to the department for a hearing or revision of the order. If the department finds that there was no violation, it shall make an order rescinding the order under review. If the department finds that there was a violation but the violation has since been abated, it shall make an order rescinding the

order under review. If the department finds that the violation was not totally abated, it shall make an order consistent with its findings.

History: (1)En. 50-480.6 by Sec. 29, Ch. 267, L. 1974; Sec. 50-480.6, R.C.M. 1947; (2)En. 50-480.7 by Sec. 30, Ch. 267, L. 1974; amd. Sec. 9, Ch. 39, L. 1977; amd. Sec. 5, Ch. 187, L. 1977; Sec. 50-480.7, R.C.M. 1947; R.C.M. 1947, 50-480.6, 50-480.7; amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

"Contested case" defined — applicability of Montana Administrative Procedure Act, 2-4-102.

50-73-418. Actions or decisions under chapter to be taken as rapidly as possible. In view of the urgent need for prompt decisions of matters submitted to the department under this chapter, all actions which the department is required to take under this chapter shall be taken as rapidly as practicable, consistent with adequate consideration of the issues involved.

History: En. 50-480.8 by Sec. 31, Ch. 267, L. 1974; R.C.M. 1947, 50-480.8; amd. Sec. 64, Ch. 613, L. 1989.

CHAPTER 74

BOILERS AND STEAM ENGINES

Part 1 — General Provisions

50-74-101. Department to formulate rules.
50-74-102. Boilers to conform to rules.
50-74-103. Boilers exempted.
50-74-104. Dinkey engines to be classed as traction engines.
50-74-105. Purchaser to notify department of purchase.
50-74-106. Certificate and license to be conspicuously displayed.
50-74-107. Wrongful certification or granting of a license a misdemeanor.
50-74-108. Tampering with safety valve a misdemeanor.

Part 2 — Inspections

50-74-201. State boiler inspectors.
50-74-202. Special boiler inspectors.
50-74-203. Qualifications of boiler inspectors.
50-74-204. Joint or separate inspection authorized — inspectors to certify inspection under seal.
50-74-205. Purchaser to receive certificate of inspection.
50-74-206. Boiler to be inspected prior to use — duty of notification.
50-74-207. Boiler opened for repair subject to inspection — duty of notification.
50-74-208. Penalty for operation without certificate or failure to give notice.
50-74-209. Required inspection intervals.
50-74-210. Duty to permit inspection.
50-74-211. Inspector to notify department of refused access.
50-74-212. Payment of costs resulting from refused access.
50-74-213. Failure to comply with department directed access a misdemeanor.
50-74-214. Engineer to assist in inspection.
50-74-215. Interior and exterior examination of boiler.
50-74-216. Hydrostatic pressure test.
50-74-217. Other inspection requirements.
50-74-218. Safe working pressure.
50-74-219. Fee for special inspection.

Part 3 — Licenses

50-74-301. License required to operate boilers and steam engines.
50-74-302. General requirements for licensure.
50-74-303. Engineer's license classifications.
50-74-304. Requirements for engineer's license.
50-74-305. Exceptions to requirements for engineer's license.
50-74-306. Traction licenses.
50-74-307. Requirements for traction licenses.
50-74-308. Waiver of experience requirement for traction licenses.
50-74-309. License fees.
50-74-310. Application to be accompanied by one-half of license fee.
50-74-311. Waiting period before reexamination permitted.
50-74-312. Review of license rejection.
50-74-313. Renewal of licenses.
50-74-314. Complaints and revocation of license.
50-74-315. Unlawful to operate boiler or steam engine without license.
50-74-316. Unlawful to employ unlicensed operator.
50-74-317. When unlicensed person may operate.

Part 1

General Provisions

Part Cross-References

Municipal power to regulate steam boiler location, 7-21-4204.

Municipal power to inspect and regulate boilers, 7-33-4204.

Workers' compensation, Title 39, ch. 71.

50-74-101. Department to formulate rules. The department shall formulate definitions and rules for the safe construction, installation, operation, inspection, and repair of equipment covered by this chapter. The definitions and rules so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(1); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

50-74-102. Boilers to conform to rules. No boiler which does not conform to the rules adopted by the department governing new construction and installation shall be installed and operated in this state after 12 months from the date upon which the first rules under this chapter pertaining to new construction and installation shall have become effective unless the boiler is of special design or construction, is not covered by the rules, or is in any way inconsistent with such rules, in which case a special installation and operating permit may be granted by the department at its discretion.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919, re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(3); amd. Sec. 64, Ch. 613, L. 1989.

50-74-103. Boilers exempted. (1) This chapter shall not apply to boilers under federal control.

(2) The provisions of this chapter requiring inspections, inspection fees, and certificates shall not apply to steam heating boilers operated at not over 15 pounds per square inch gauge pressure in private residences or apartments of six or less families or to hot water heating or supply boilers operated at not over 50 pounds per square inch gauge pressure and temperatures not over 250 degrees F when in private residences or apartments of six or less families.

(3) No persons operating any of the engines or boilers exempted from the operation of this chapter shall be required to procure a license from the department.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-104. Dinkey engines to be classed as traction engines. Locomotives, commonly known as dinkey engines, used in operating logging or mining railroads or any similar work where such locomotives are owned, leased, or operated by any individual, company, or corporation and are used in the business of such individual, company, or corporation and not for general commercial purposes shall be classed as traction engines and be subject to inspection as are other traction engines, and the persons operating or firing such dinkey locomotives shall be required to hold traction licenses.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-105. Purchaser to notify department of purchase. (1) Any person purchasing any boiler, whether traction or stationary, not exempted by the provisions of 50-74-103 shall, within 10 days after such purchase, report the fact of such purchase to the department and shall notify the department as to where the boiler will be installed and operated.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-106. Certificate and license to be conspicuously displayed. All certificates of inspection, operating certificates, and engineer's licenses must be displayed in a conspicuous place in the boiler room.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-107. Wrongful certification or granting of a license a misdemeanor. Any inspector or assistant inspector who willfully certifies regarding any boilers or their attachments or grants a license to any person to act as engineer contrary to the provisions of this chapter is guilty of a misdemeanor.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-108. Tampering with safety valve a misdemeanor. A renter, user, or owner of a boiler or a person who tampers with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate is guilty of a misdemeanor.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(2).

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

Part 2

Inspections

Part Cross-References

Municipal power to regulate steam boiler location, 7-21-4204.

Municipal power to inspect and regulate boilers, 7-33-4204.

Workers' compensation, Title 39, ch. 71.

50-74-201. State boiler inspectors. The department shall appoint state inspectors of boilers and shall prescribe their duties and term of office and fix their compensation.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(2); amd. Sec. 64, Ch. 613, L. 1989.

50-74-202. Special boiler inspectors. (1) In addition to the state boiler inspectors, the department shall issue to the inspectors of boiler insurance companies authorized to do business in the state commissions, certificates, or other recognition as special boiler inspectors and may accept the inspection reports of such special inspectors as equivalent to those of the state inspectors.

(2) Each such special inspector shall hold a certificate as boiler inspector issued by the national board of boiler and pressure vessels inspectors.

(3) Such special inspectors shall receive no salary or expenses from the state, nor shall the state collect inspection fees for inspections made by such special inspectors.

History: En. Sec. 550, Pol. C. 1895; re-en. Sec. 1639, Rev. C. 1907; amd. Sec. 1, Ch. 30, L. 1913; amd. Sec. 1, Ch. 12, L. 1921; re-en. Sec. 2712, R.C.M. 1921; re-en. Sec. 2712, R.C.M. 1935; amd. Sec. 1, Ch. 77, L. 1967; amd. Sec. 1, Ch. 225, L. 1971; amd. Sec. 25, Ch. 182, L. 1975; amd. Sec. 1, Ch. 152, L. 1977; R.C.M. 1947, 69-1501(3); amd. Sec. 64, Ch. 613, L. 1989.

50-74-203. Qualifications of boiler inspectors. No person is eligible to hold the office of inspector of boilers and steam engines who has not had at least 10 years of actual experience in the operation of steam engines, steam boilers, and steam machinery and who has not held for at least 3 years immediately preceding his appointment a first-class stationary engineer's license of the state of Montana or who is directly or indirectly interested in the manufacture or sale of boilers or steam machinery or any patented article required to be sold relating thereto.

History: En. Sec. 2, p. 102, L. 1889; amd. Sec. 551, Pol. C. 1895; re-en. Sec. 1640, Rev. C. 1907; amd. Sec. 2, Ch. 30, L. 1913; re-en. Sec. 2713, R.C.M. 1921; amd. Sec. 2, Ch. 225, L. 1971; R.C.M. 1947, 69-1502.

50-74-204. Joint or separate inspection authorized — inspectors to certify inspection under seal. In making an inspection of the boilers and machinery herein provided for, the inspectors may act jointly or separately, but the inspector or assistant inspector making such inspection must in all cases certify the same under the seal of the inspector of boilers and safety.

History: En. Sec. 562, Pol. C. 1895; re-en. Sec. 1651, Rev. C. 1907; amd. Sec. 11, Ch. 30, L. 1913; re-en. Sec. 2722, R.C.M. 1921; re-en. Sec. 2722, R.C.M. 1935; amd. Sec. 10, Ch. 225, L. 1971; amd. Sec. 20, Ch. 513, L. 1973; R.C.M. 1947, 69-1511(part).

50-74-205. Purchaser to receive certificate of inspection. (1) Any person purchasing any boiler, whether traction or stationary, shall be entitled to receive from the seller the certificates of inspection issued on such boiler.

(2) Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

Cross-References

Misdemeanor penalty when none specified, 46-18-212.

50-74-206. Boiler to be inspected prior to use — duty of notification. (1) The inspector of boilers must inspect all boilers and steam generators before the same are used.

(2) All persons who bring into this state for operation in this state any boiler or boilers must notify the department stating the number and kind of boilers and where they are to be located and operated in this state and must secure from the department a certificate of inspection before boilers are placed in operation except in the case of new boilers, which must be inspected within 90 days after they are put in use.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-207. Boiler opened for repair subject to inspection — duty of notification. Any owner, operator, or user who opens a boiler or boilers between inspections for repair or other reasons must notify the department of such action, and such boiler or boilers shall at the discretion of the department be inspected by the state or special boiler inspector before the boiler or boilers may be placed back in operation.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-208. Penalty for operation without certificate or failure to give notice. Any person failing to give notice to the department as provided in 50-74-206 or 50-74-207 or who operates such boilers without a certificate from the department shall be punished by a fine of not less than $100 or more than $500 for each offense, by imprisonment in the county jail for not less than 30 or more than 90 days, or by both such fine and imprisonment.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Criminal responsibility of corporations, 45-2-311.

50-74-209. Required inspection intervals. (1) All boilers must be inspected at least once in every year except boilers exempt under provisions of 50-74-103. Upon written application, longer inspection intervals may be authorized by the department.

(2) In addition to the annual inspection, it is the duty of the inspectors to examine at proper times, when in their opinion such examination is necessary, all such boilers as shall have become unsafe from any cause and to notify the owner or the person using such boilers of any defect and what repairs are necessary to render them safe.

History: (1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 557, Pol. C. 1895; re-en. Sec. 1646, Rev. C. 1907; re-en. Sec. 2717, R.C.M. 1921; re-en. Sec. 2717, R.C.M. 1935; Sec. 69-1506, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1506; amd. Sec. 64, Ch. 613, L. 1989.

50-74-210. Duty to permit inspection. It is the duty of the owners, engineers, or managers of steam or water boilers to allow the inspector free access to the same.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Searches and seizures, Art. II, sec. 11, Mont. Const.

50-74-211. Inspector to notify department of refused access. In case the owner, operators, or manager of any boiler is notified by the inspector to have the boiler ready for inspection on a certain day and fails to have such boiler ready for inspection at such time, the inspector shall notify the department to gain access to the boiler.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-212. Payment of costs resulting from refused access. The owner, engineer, or manager of any boiler who has refused access resulting in a department order must pay all transportation and hotel expenses of the inspector who makes the inspection directed by such order in addition to the inspection fee provided by law.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-213. Failure to comply with department directed access a misdemeanor. Any person failing to immediately comply with department directed access to the boiler shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $100 or more than $500, by imprisonment in the county jail for not less than 2 months or more than 6 months, or by both such fine and imprisonment.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

Criminal responsibility of corporations, 50-72-104.

50-74-214. Engineer to assist in inspection. It shall be the duty of the engineer operating any boiler or boilers to assist the inspectors in their examination of the same and point out any defects known to him in the boilers or machinery under his charge. Any engineer not complying with this section shall have his license revoked or suspended.

History: En. Sec. 558, Pol. C. 1895; re-en. Sec. 1647, Rev. C. 1907; amd. Sec. 7, Ch. 30, L. 1913; re-en. Sec. 2718, R.C.M. 1921; re-en. Sec. 2718, R.C.M. 1935; amd. Sec. 6, Ch. 225, L. 1971; amd. Sec. 27, Ch. 182, L. 1975; R.C.M. 1947, 69-1507(part).

50-74-215. Interior and exterior examination of boiler. (1) The inspector must satisfy himself by a thorough interior and exterior examination that the boilers are well-made and of good and suitable material; that the openings for the passage of water and steam, respectively, and all pipes and tubes exposed to heat are of the proper dimensions and free from obstructions; that the flues are circular in shape; that the fire line of the furnace is at least

2 inches below prescribed minimum water line of the boilers; that the arrangements for delivering the feed water are such that the boilers cannot be injured thereby; and that such boilers and the steam connections may be safely employed without danger to life.

(2) No boiler or steam pipe or any of the connections thereto which are made in whole or in part of bad material or are unsafe from any cause shall be approved. Nothing herein shall be construed to prevent the use of any boiler or steam generator, which may not be constructed of riveted iron or steel plates, when the inspector has satisfactory evidence that such boiler or steam generator is equal in strength to and as safe from explosion as boilers of the best quality, constructed of iron or steel plates.

History: (1)En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; Sec. 69-1503, R.C.M. 1947; (2)En. Sec. 556, Pol. C. 1895; re-en. Sec. 1645, Rev. C. 1907; re-en. Sec. 2716, R.C.M. 1921; re-en. Sec. 2716, R.C.M. 1935; amd. Sec. 5, Ch. 225, L. 1971; Sec. 69-1505, R.C.M. 1947; R.C.M. 1947, 69-1503(part), 69-1505.

50-74-216. Hydrostatic pressure test. When necessary, the boiler inspector shall subject boilers, except those exempted by 50-74-103, to hydrostatic pressure, which hydrostatic pressure shall not exceed 150% of the steam pressure allowed on the boilers, providing there are no such leaks on such boilers which prevent the inspector from applying such hydrostatic pressure.

History: En. Sec. 554, Pol. C. 1895; re-en. Sec. 1643, Rev. C. 1907; amd. Sec. 5, Ch. 30, L. 1913; amd. Sec. 1, Ch. 32, L. 1919; re-en. Sec. 2714, R.C.M. 1921; re-en. Sec. 2714, R.C.M. 1935; amd. Sec. 2, Ch. 77, L. 1967; amd. Sec. 3, Ch. 225, L. 1971; amd. Sec. 26, Ch. 182, L. 1975; R.C.M. 1947, 69-1503(part).

50-74-217. Other inspection requirements. The inspector must satisfy himself that:

(1) the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged and are properly adjusted so as not to allow a greater pressure in a boiler than the amount prescribed by the inspection certificate;

(2) there are a sufficient number of gauge cocks properly inserted to indicate the amount of water and suitable gauges that will correctly record the pressure of steam; and

(3) adequate and certain provisions for an ample supply of water to feed the boiler at all times and suitable means for blowing out are provided so as to thoroughly remove mud and sediment from all parts of the boiler when it is under pressure of steam.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(1).

50-74-218. Safe working pressure. (1) If a boiler is constructed with lap horizontal seams on the boiler, dome, or drum, a factor of 4 1/2 shall be used in determining the safe working pressure allowed on the boiler.

(2) If a boiler is constructed with butt strap horizontal seams, a factor of four may be used in determining the safe working pressure.

(3) If a boiler rests on a side wall on lugs, is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal

seam of rivets, a factor of five must be used in determining the safe working pressure.

(4) If the horizontal lap seams of a boiler are exposed to the fire, a factor of five must be used in determining the safe working pressure.

(5) On new stay bolts, 7,500 pounds pressure per square inch is allowed. If the stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on them.

(6) On braces made of solid material, 8,000 pounds pressure per square inch is allowed. On welded braces or braces with only one crowfoot, 6,000 pounds pressure per square inch is allowed.

(7) No cast iron may be used in the construction or reinforcements of a boiler if the pressure allowed on the boiler is more than 100 pounds per square inch.

History: En. Sec. 555, Pol. C. 1895; re-en. Sec. 1644, Rev. C. 1907; amd. Sec. 6, Ch. 30, L. 1913; re-en. Sec. 2715, R.C.M. 1921; re-en. Sec. 2715, R.C.M. 1935; amd. Sec. 4, Ch. 225, L. 1971; amd. Sec. 9, Ch. 187, L. 1977; R.C.M. 1947, 69-1504(3).

50-74-219. Fee for special inspection. Whenever, upon request of the owner or operator of any boiler, it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law shall be charged and collected by the department.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(1); amd. Sec. 64, Ch. 613, L. 1989.

Cross-References

State reimbursement for travel, meals, and lodging, Title 2, ch. 18, part 5.

Part 3

Licenses

50-74-301. License required to operate boilers and steam engines. All boilers and steam engines, except as exempted in 50-74-103, come under the provisions of this chapter, and persons operating same are required to hold the proper grade of license.

History: En. Sec. 5, Ch. 32, L. 1905; re-en. Sec. 1655, Rev. C. 1907; amd. Sec. 13, Ch. 30, L. 1913; amd. Sec. 4, Ch. 32, L. 1919; re-en. Sec. 2726, R.C.M. 1921; amd. Sec. 1, Ch. 140, L. 1923; re-en. Sec. 2726, R.C.M. 1935; amd. Sec. 4, Ch. 77, L. 1967; amd. Sec. 14, Ch. 225, L. 1971; amd. Sec. 33, Ch. 182, L. 1975; R.C.M. 1947, 69-1515(part).

50-74-302. General requirements for licensure. No person may be granted a license to operate steam or water boilers and steam machinery under the provisions of this chapter who has not met the qualifications for licensing and been found to be competent by examination to perform the duties of an engineer.

History: En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; R.C.M. 1947, 69-1508(part).

50-74-303. Engineer's license classifications. (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in 50-74-302, are divided into four classes, namely: first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery are divided into four classifications in accordance with the following schedule:

(a) First-class engineers are licensed to operate all classes, pressures, and temperatures of steam and water boilers and steam-driven machinery with the exception of traction and hoisting engines.

(b) Second-class engineers are licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and 450 degrees F temperature, and steam-driven machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers are licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure and water boilers operating not in excess of 160 pounds per square inch gauge pressure and 350 degrees F temperature.

(d) Low-pressure engineers are licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure and water boilers operating not in excess of 50 pounds per square inch gauge pressure and 250 degrees F temperature.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(1), (2).

50-74-304. Requirements for engineer's license. Each applicant for an engineer's license must be physically and mentally capable of performing the required duties and meet the following minimum requirements for the class of engineer's license for which application is being made:

(1) An applicant for a low-pressure engineer's license must have at least 3 months' full-time experience in the operation of a boiler in this classification, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(2) An applicant for a third-class engineer's license must have at least 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler in this classification.

(3) An applicant for a second-class engineer's license must:

(a) have at least 2 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(b) hold a valid third-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

(4) An applicant for a first-class engineer's license must:

(a) have at least 3 years' full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification;

(b) hold a valid second-class engineer's license and have at least 1 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification; or

(c) hold a valid third-class engineer's license and have at least 2 year's full-time experience in the operation of a boiler and steam-driven machinery in this classification under an engineer holding a valid first-class license, successfully passed a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a boiler and steam-driven machinery in this classification.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(3); amd. Sec. 64, Ch. 613, L. 1989.

50-74-305. Exceptions to requirements for engineer's license. Allowable exceptions or variances to the minimum requirements set out in 50-74-304 are as follows:

(1) An applicant for an engineer's license in any classification holding a valid license in that classification from another state having licensing requirements equal to or exceeding the minimum requirements set out in 50-74-304, successfully passing a written examination prescribed by the department, and found to be competent to operate a boiler and steam-driven machinery in that classification shall be granted a license in that classification.

(2) Operating experience in a classification accumulated in the United States military services or the merchant marine service satisfactory to the department may be accepted in lieu of the operating experience required for licensing of engineers in each of the license classifications.

(3) An applicant having training in the operation of steam or water boilers and steam machinery who has been certified as having satisfactorily completed a prescribed training course from a recognized vocational-technical training school or center or other department-approved institution or training program in the classification for which he is applying may, at the discretion of the department, be credited with a maximum of 6 months' experience toward a first-, second-, or third-class engineer's license.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(4); amd. Sec. 64, Ch. 613, L. 1989.

50-74-306. Traction licenses. (1) None of the licenses named in 50-74-303 entitle its holder to operate a traction engine.

(2) A person who is entrusted with the care and management of traction engines or boilers on wheels is required to pass an examination testing his competency to operate that class of machinery and procure a traction license.

(3) A traction license does not entitle its holder to operate any other class of steam machinery.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part).

50-74-307. Requirements for traction licenses. An applicant for a traction engineer's license must have at least 6 months' full-time experience in the operation of steam traction engines, successfully pass a written examination prescribed by the department, have passed his 18th birthday, and be found to be competent to operate a traction engine.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-308. Waiver of experience requirement for traction licenses. The department, at its discretion, may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment.

History: En. Sec. 3, Ch. 32, L. 1905; re-en. Sec. 1649, Rev. C. 1907; amd. Sec. 9, Ch. 30, L. 1913; amd. Sec. 2, Ch. 32, L. 1919; re-en. Sec. 2720, R.C.M. 1921; re-en. Sec. 2720, R.C.M. 1935; amd. Sec. 8, Ch. 225, L. 1971; amd. Sec. 26, Ch. 94, L. 1973; amd. Sec. 28, Ch. 182, L. 1975; amd. Sec. 11, Ch. 187, L. 1977; R.C.M. 1947, 69-1509(part); amd. Sec. 64, Ch. 613, L. 1989.

50-74-309. License fees. Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(1) first class	$30
(2) second class	$20
(3) third class	$12
(4) low pressure	$ 8

(5) traction	$12
(6) renewal of license	$ 4
(7) replacement of lost certificate	$ 2

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(2).

50-74-310. Application to be accompanied by one-half of license fee. Each application shall be accompanied by a payment equal to 50% of the license fee for which application is being made. The payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(3).

50-74-311. Waiting period before reexamination permitted. In case of the failure of any applicant to successfully pass an examination, 45 days must elapse before he can again be examined for license.

History: En. Sec. 4, Ch. 32, L. 1905; re-en. Sec. 1652, Rev. C. 1907; amd. Sec. 12, Ch. 30, L. 1913; amd. Sec. 3, Ch. 32, L. 1919; re-en. Sec. 2723, R.C.M. 1921; re-en. Sec. 2723, R.C.M. 1935; amd. Sec. 1, Ch. 54, L. 1959; amd. Sec. 3, Ch. 77, L. 1967; amd. Sec. 1, Ch. 255, L. 1969; amd. Sec. 11, Ch. 225, L. 1971; amd. Sec. 30, Ch. 182, L. 1975; amd. Sec. 1, Ch. 83, L. 1977; R.C.M. 1947, 69-1512(4).

50-74-312. Review of license rejection. (1) If any person who has applied for a license under the provisions of this chapter and has been rejected feels aggrieved, he may, at any time after the lapse of 10 days and within 45 days after the date of his rejection, in writing set forth the causes of his grievance and request a department review. Such request must be addressed to the department and shall be signed by the rejected applicant.

(2) Within 2 days after receiving such request, the department shall notify the applicant in writing that on a certain day, which shall not be less than 5 or more than 30 days after the date the department receives the written request, the department shall review and evaluate the application.

(3) The applicant may appear in person at the review if he so desires. At least 2 days before the day set for the review, the applicant may designate in writing to the department the name of an engineer holding a valid license of equal or higher grade with the one applied for, and such engineer may present himself in behalf of the applicant upon the day and at the hour fixed for the review.

(4) After the review is completed, if the department decides that the applicant is entitled to the license he has applied for, the department shall without delay issue a license accordingly but, if the department rejects the applicant, it is a final rejection and he must not be granted another examination for the space of 45 days after such last rejection, when he may again apply as provided by 50-74-309 through 50-74-311.

History: (1) thru (3)En. Sec. 564, Pol. C. 1895; re-en. Sec. 1653, Rev. C. 1907; re-en. Sec. 2724, R.C.M. 1921; re-en. Sec. 2724, R.C.M. 1935; amd. Sec. 12, Ch. 225, L. 1971; amd.

Sec. 31, Ch. 182, L. 1975; Sec. 69-1513, R.C.M. 1947; (4)En. Sec. 565, Pol. C. 1895; re-en. Sec. 1654, Rev. C. 1907; re-en. Sec. 2725, R.C.M. 1921; re-en. Sec. 2725, R.C.M. 1935; amd. Sec. 13, Ch. 225, L. 1971; amd. Sec. 32, Ch. 182, L. 1975; Sec. 69-1514, R.C.M. 1947; R.C.M. 1947, 69-1513, 69-1514; amd. Sec. 64, Ch. 613, L. 1989.

50-74-313. Renewal of licenses. (1) All certificates of license to engineers of all classes shall be renewed yearly, except as herein provided.

(2) Any engineer failing to renew his license as herein provided or within at least 30 days after the date of expiration shall be assessed the fee for the original license of the same grade before the license will be reissued.

(3) Any engineer failing to renew his license within 12 months of the date of expiration must reapply for an engineer's license as required by the provisions of 50-74-303 through 50-74-308.

(4) Any engineer whose license expired while such engineer was in the military or naval service of the United States shall have 90 days from the time such engineer is discharged from such military or naval service within which to renew his license at the renewal fee.

History: En. Sec. 6, Ch. 32, L. 1905; re-en. Sec. 1656, Rev. C. 1907; amd. Sec. 14, Ch. 30, L. 1913; amd. Sec. 1, Ch. 54, L. 1919; re-en. Sec. 2727, R.C.M. 1921; amd. Sec. 2, Ch. 54, L. 1959; amd. Sec. 167, Ch. 147, L. 1963; amd. Sec. 15, Ch. 225, L. 1971; R.C.M. 1947, 69-1516.

50-74-314. Complaints and revocation of license. Whenever complaint is made against an engineer holding a license that he, through negligence, want of skill, or inattention to duty, permitted his boiler to burn or otherwise become in bad condition or that he has been found intoxicated or under the influence of drugs while on duty, it is the duty of the department to make a thorough investigation of the charge and upon satisfactory proof of such charge to revoke the license of the engineer.

History: En. Sec. 561, Pol. C. 1895; re-en. Sec. 1650, Rev. C. 1907; amd. Sec. 10, Ch. 30, L. 1913; re-en. Sec. 2721, R.C.M. 1921; amd. Sec. 9, Ch. 225, L. 1971; amd. Sec. 29, Ch. 182, L. 1975; R.C.M. 1947, 69-1510; amd. Sec. 64, Ch. 613, L. 1989.

50-74-315. Unlawful to operate boiler or steam engine without license. (1) It is unlawful for any person in this state to operate a stationary boiler or steam engine or any boiler or steam engine other than engines and boilers exempted by the provisions of 50-74-103 without a license granted under the provisions of this chapter. The owner, renter, or user of any engine or boiler is equally liable for the violation of this section.

(2) A person who operates a boiler or steam engine without first obtaining a license is guilty of a misdemeanor and, upon conviction, shall be fined no less than $50 or more than $100 or be imprisoned in the county jail for any term not to exceed 60 days, or both.

History: (1)En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; Sec. 69-1517, R.C.M. 1947; (2)En. Sec. 559, Pol. C. 1895; re-en. Sec. 1648, Rev. C. 1907; amd. Sec. 8, Ch. 30, L. 1913; re-en. Sec. 2719, R.C.M. 1921; re-en. Sec. 2719, R.C.M. 1935; amd. Sec. 7, Ch. 225, L. 1971; amd. Sec. 10, Ch. 187, L. 1977; Sec. 69-1508, R.C.M. 1947; R.C.M. 1947, 69-1508(part), 69-1517(part).

50-74-316. Unlawful to employ unlicensed operator. It shall be unlawful, except as stated in 50-74-317, for any person, firm, or corporation to employ any person not duly licensed as an engineer within the meaning of this chapter to run or operate any of the boilers or engines subject to the provisions of this chapter.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part).

50-74-317. When unlicensed person may operate. (1) In case of accident, sickness, or any unforeseen prevention of the licensed engineer employed by any owner, renter, or user of an engine or boiler, the owner, renter, or user may for 15 days employ any person of the age of 18 years or over whom he may consider competent to run the engine or boiler.

(2) Although such person so employed may not be the holder of an engineer's license, he shall have reasonable qualifications acceptable to the department.

(3) The person so employing the unlicensed engineer shall immediately notify the department.

(4) No owner, renter, or user of boilers or steam machinery shall be allowed to so employ unlicensed engineers for more than 15 days in any one calendar year.

History: En. Sec. 568, Pol. C. 1895; re-en. Sec. 1657, Rev. C. 1907; amd. Sec. 15, Ch. 30, L. 1913; re-en. Sec. 2728, R.C.M. 1921; re-en. Sec. 2728, R.C.M. 1935; amd. Sec. 16, Ch. 225, L. 1971; amd. Sec. 34, Ch. 182, L. 1975; R.C.M. 1947, 69-1517(part); amd. Sec. 64, Ch. 613, L. 1989.

CHAPTER 75

CONSOLIDATION OF BOILER, MINE, AND COAL MINE INSPECTORS

(Repealed. Sec. 10, Ch. 21, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections:

50-75-101. En. Sec. 1, Ch. 92, L. 1917; amd. Sec. 1, Ch. 47, L. 1921; re-en. Sec. 3034, R.C.M. 1921; re-en. Sec. 3034, R.C.M. 1935; R.C.M. 1947, 50-901.

50-75-102. En. Sec. 2, Ch. 92, L. 1917; amd. Sec. 2, Ch. 47, L. 1921; re-en. Sec. 3035, R.C.M. 1921; re-en. Sec. 3035, R.C.M. 1935; R.C.M. 1947, 50-902.

50-75-103. En. Sec. 3, Ch. 92, L. 1917; re-en. Sec. 3036, R.C.M. 1921; re-en. Sec. 3036, R.C.M. 1935; R.C.M. 1947, 50-903.

50-75-104. En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part).

50-75-105. En. Sec. 4, Ch. 92, L. 1917; re-en. Sec. 3037, R.C.M. 1921; re-en. Sec. 3037, R.C.M. 1935; R.C.M. 1947, 50-904(part); amd. Sec. 24, Ch. 37, L. 1979.

50-75-106. En. Sec. 5, Ch. 92, L. 1917; re-en. Sec. 3038, R.C.M. 1921; re-en. Sec. 3038, R.C.M. 1935; R.C.M. 1947, 50-905.

50-75-107. En. Sec. 55, Ch. 96, L. 1915; amd. Sec. 6, Ch. 92, L. 1917; re-en. Sec. 3039, R.C.M. 1921; re-en. Sec. 3039, R.C.M. 1935; R.C.M. 1947, 50-906(part); amd. Sec. 25, Ch. 37, L. 1979.

CHAPTER 76

HOISTING ENGINES

Part 1 — General Provisions

50-76-101. Where chapter not to apply.
50-76-102. Hoisting engine license required.
50-76-103. Crane and hoist license required.
50-76-104. Application and fee for license.
50-76-105. Renewal and period of validity of license.
50-76-106. Revocation of license.
50-76-107. Scope of license.
50-76-108. Renewal of application by rejected candidate.
50-76-109. Violation of chapter a misdemeanor.
50-76-110. Crane inspector.

Chapter Cross-References

Workers' compensation, Title 39, ch. 71.

Part 1

General Provisions

50-76-101. Where chapter not to apply. (1) This chapter shall not apply to hoisting engines, air compressors, or elevators under federal control or to operating elevators in completed private or public buildings.

(2) The provisions of this chapter shall not apply to forklifts and front-end and rear-end loaders or line trucks and bucket trucks. For the purposes of this section, "line trucks" are hoisting and digging devices mounted on a standard manufacturer's truck chassis with an all-weather cab capable of transporting a driver and two or more crewmen. Line trucks are equipped with a hydraulically operated, telescoping boom which uses a nonmetallic cable for hoisting. Line trucks may be equipped with a rotary digging device and are capable of attaining maximum allowable highway speeds. "Bucket trucks" are personnel-lifting devices designed to lift personnel to work stations above ground. Bucket trucks are not designed for the purposes intended for a line truck.

History: (1)En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; Sec. 69-1603, R.C.M. 1947; (2)En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975; Sec. 69-1601, R.C.M. 1947; R.C.M. 1947, 69-1601(5), 69-1603(2); amd. Sec. 1, Ch. 288, L. 1983; amd. Sec. 1, Ch. 247, L. 1987.

50-76-102. Hoisting engine license required. (1) (a) It is unlawful for any person to operate any hoisting engine driven by any power when used in lowering or hoisting personnel or material in industrial operations or on construction projects without first obtaining a license therefor from the department.

(b) In emergencies under 50-74-317 relating to the employment of unlicensed engineers, the provisions of that section shall apply to the operation of the engines and machinery named herein.

(2) First-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and unlimited horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(3) Second-class hoisting engineers shall be licensed to operate hoisting engines driven by any power and not in excess of 100 brake horsepower used in the lowering or hoisting of personnel or material in industrial operations or on construction projects.

(4) The provisions of this section shall not apply to hoists and cranes defined in 50-76-103.

History: En. Sec. 1, Ch. 104, L. 1915; amd. Sec. 1, Ch. 31, L. 1919; re-en. Sec. 2730, R.C.M. 1921; re-en. Sec. 2730, R.C.M. 1935; amd. Sec. 17, Ch. 225, L. 1971; amd. Sec. 35, Ch. 182, L. 1975; amd. Sec. 1, Ch. 456, L. 1975; R.C.M. 1947, 69-1601(1) thru (4); amd. Sec. 64, Ch. 613, L. 1989.

50-76-103. Crane and hoist license required. (1) (a) It is unlawful for a person to operate any hoisting equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of above 6 tons and a boom length of more than 25 feet without first obtaining a license from the department. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use.

(b) In emergencies, 50-74-317 shall apply to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) (i) An applicant for a first-class hoisting engineer's license shall have:

(A) no less than 3 years' experience operating equipment requiring a second-class hoisting engineer's license or shall otherwise be shown to be equivalently competent by examination;

(B) passed his 18th birthday; and

(C) passed a written test prescribed by the department.

(ii) An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of 6 tons and a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) (i) Applicants for a second-class hoisting engineer's license shall:

(A) have no less than 2 years' experience in actual operation of hoisting equipment covered by this section or shall otherwise be shown to be equivalently competent by examination;

(B) successfully pass a written examination prescribed by the department; and

(C) have passed their 18th birthday.

(ii) An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed to move all truck cranes driven by any power and of any capacity. This license requirement applies to truck crane oilers who move truck cranes.

(f) Applicants for a third-class hoisting engineer's license shall successfully pass a written test prescribed by the department and shall be at least 18 years old before receiving this license.

(3) The department shall reexamine each licensed engineer or operator every 5 years during the anniversary month of his license if the licensee has not worked at the trade for 5 years.

History: **En. 69-1601.1 by Sec. 2, Ch. 456, L. 1975; amd. Sec. 1, Ch. 148, L. 1977; R.C.M. 1947, 69-1601.1; amd. Sec. 64, Ch. 613, L. 1989.**

50-76-104. Application and fee for license. Application for licenses shall be made to the department in the same manner and the same fee shall be charged as required by law for obtaining a license to operate steam engines, boilers, and steam-driven machinery under chapter 74 of this title.

History: **En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part); amd. Sec. 64, Ch. 613, L. 1989.**

50-76-105. Renewal and period of validity of license. The license is valid for 1 year from the date of issuance and may be renewed in the same manner provided by law for the renewal of a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title.

History: **En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part).**

50-76-106. Revocation of license. The department may revoke any license issued under this chapter for any of the reasons for which the department may revoke a license to operate steam engines, boilers, or steam-driven machinery under chapter 74 of this title.

History: **En. Sec. 2, Ch. 104, L. 1915; re-en. Sec. 2731, R.C.M. 1921; re-en. Sec. 2731, R.C.M. 1935; amd. Sec. 18, Ch. 225, L. 1971; amd. Sec. 36, Ch. 182, L. 1975; amd. Sec. 3, Ch. 456, L. 1975; R.C.M. 1947, 69-1602(part); amd. Sec. 64, Ch. 613, L. 1989.**

50-76-107. Scope of license. A license granted under this chapter entitles the holder to operate any of the machinery named in 50-76-102 and 50-76-103, and the license shall specify that machinery, but no license issued shall authorize or qualify the person to whom issued to operate a boiler, steam engine, steam-driven machinery, or air compressor.

History: **En. Sec. 3, Ch. 104, L. 1915; amd. Sec. 2, Ch. 31, L. 1919; re-en. Sec. 2732, R.C.M. 1921; re-en. Sec. 2732, R.C.M. 1947; amd. Sec. 19, Ch. 225, L. 1971; amd. Sec. 4, Ch. 456, L. 1975; R.C.M. 1947, 69-1603(1).**

50-76-108. Renewal of application by rejected candidate. Any person who has applied for a license under this chapter and has been rejected may renew his application for a license within the time and in the manner prescribed in 50-74-312.

History: **En. Sec. 6, Ch. 104, L. 1915; re-en. Sec. 2735, R.C.M. 1921; amd. Sec. 5, Ch. 456, L. 1975; R.C.M. 1947, 69-1606.**

50-76-109. Violation of chapter a misdemeanor. Every person who operates any of the engines and machinery named in 50-76-102 or 50-76-103 for which a license is required without first obtaining a license as required by the sections referred to above and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate such engines or machinery or any person who violates any of the provisions of this chapter is guilty of a misdemeanor.

History: En. Sec. 7, Ch. 104, L. 1915; re-en. Sec. 2736, R.C.M. 1921; re-en. Sec. 2736, R.C.M. 1935; amd. Sec. 21, Ch. 225, L. 1971; amd. Sec. 7, Ch. 456, L. 1975; amd. Sec. 2, Ch. 148, L. 1977; R.C.M. 1947, 69-1607.

Cross-References

Criminal responsibility of corporations, 45-2-311.

Misdemeanor penalty when none specified, 46-18-212.

50-76-110. Crane inspector. The department shall employ at least one crane inspector. He shall hold a first-class hoisting engineer's license under this chapter for 1 year and have 3 years' experience operating cranes.

History: En. 69-1608 by Sec. 6, Ch. 456, L. 1975; R.C.M. 1947, 69-1608; amd. Sec. 64, Ch. 613, L. 1989.

CHAPTER 77

CONSTRUCTION SITE HEALTH AND SAFETY

Part 1 — General Provisions

50-77-101. Construction of scaffolds.
50-77-102. Temporary floors for protection of workmen.
50-77-103. Planking above scaffolds.
50-77-104. Guarding of stairways and other openings.
50-77-105. Temporary toilets.
50-77-106. Building inspector to enforce chapter.
50-77-107. Penalty for violation.

Chapter Cross-References

Workers' compensation, Title 39, ch. 71.

Part 1

General Provisions

50-77-101. Construction of scaffolds. All scaffolds erected in this state for use in the erection, repair, alteration, or removal of buildings shall be well and safely supported, of sufficient width, and properly secured so as to ensure the safety of persons working on them or passing under them or by them and to prevent them from falling or to prevent any material that may be used, placed, or deposited on them from falling.

History: En. Sec. 1, Ch. 107, L. 1909; re-en. Sec. 2672, R.C.M. 1921; re-en. Sec. 2672, R.C.M. 1935; amd. Sec. 8, Ch. 187, L. 1977; R.C.M. 1947, 69-1401.

50-77-102. Temporary floors for protection of workmen. (1) It shall be the duty of every owner, person, or corporation who shall have the direct and immediate supervision or control of the construction or remodeling of any building having more than three framed floors, whether some or all of said floors are above or below the established street grade, to provide and lay upon the upper side of the joists or girders, or both, of the first floor below the riveters and structural steel setters a plank floor, which shall be laid to form a good substantial temporary floor for the protection of employees and all persons engaged above or below or on such temporary floor in such building.

(2) Where the permanent floor is in place on the floor herein required to be planked, a temporary protective floor shall not be required.

(3) If the floor or permanent floor of the second floor, any other floor above the second, or roof is being placed previous to the permanent floor immediately below the floor which is being arched or planked, a good substantial temporary floor shall be laid on the joists and girders of the next lower floor.

(4) For the purpose of this section, the lowest framed floor in the building shall be considered the first floor.

History: En. Sec. 2, Ch. 107, L. 1909; re-en. Sec. 2673, R.C.M. 1921; R.C.M. 1947, 69-1402.

50-77-103. Planking above scaffolds. In buildings more than three stories high where persons are working on a scaffold or scaffolds on the outside of such buildings, such persons shall be protected by well secured planking set over the heads of such persons for the full width of the scaffolding on which they are working if another story or stories are being raised above such persons during the time they are working on such outside scaffold or scaffolding.

History: En. Sec. 3, Ch. 107, L. 1909; re-en. Sec. 2674, R.C.M. 1921; R.C.M. 1947, 69-1403.

50-77-104. Guarding of stairways and other openings. It shall be the duty of all owners, contractors, builders, or persons having the direct and immediate control or supervision of any buildings in course of erection, which shall be more than 30 feet high, to see that all stairways, elevator openings, flues, and all other openings in the floors shall be covered or properly protected.

History: En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).

50-77-105. Temporary toilets. Wherever such building or buildings over three stories high, other than a residence, are being erected in any city or town, temporary toilets in or convenient to such building shall be maintained for the convenience of the employees.

History: En. Sec. 4, Ch. 107, L. 1909; re-en. Sec. 2675, R.C.M. 1921; re-en. Sec. 2675, R.C.M. 1935; R.C.M. 1947, 69-1404(part).

50-77-106. Building inspector to enforce chapter. It is hereby made the duty of the building inspector, his deputy, or other authorities in any county, city, town, or village in the state, through the county attorney or any other attorney, in case of failure of such owner, person, or corporation to comply with this chapter promptly, to take the necessary steps to enforce the provisions of this chapter.

History: **En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).**

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Municipal housing and construction, Title 7, ch. 5, part 41.

50-77-107. Penalty for violation. Any person violating any of the provisions of the foregoing sections shall be fined not less than $100 or more than $200 for each offense.

History: **En. Sec. 5, Ch. 107, L. 1909; re-en. Sec. 2676, R.C.M. 1921; re-en. Sec. 2676, R.C.M. 1935; R.C.M. 1947, 69-1405(part).**

Cross-References

Criminal responsibility of corporations, 45-2-311.

CHAPTER 78

EMPLOYEE AND COMMUNITY HAZARDOUS CHEMICAL INFORMATION ACT

Part 1 — General

50-78-101. Short title.
50-78-102. Definitions.
50-78-103. Applicability — exemptions.
50-78-104. Relationship to OSHA standard.

Part 2 — Notice Required

50-78-201. Notice to employees.
50-78-202. Workplace chemical list.
50-78-203. Material safety data sheets.
50-78-204. Employee rights.
50-78-205. Trade secret confidentiality.
50-78-206. Labels.

Part 3 — Information and Education

50-78-301. Emergency and community information.
50-78-302 through 50-78-304 reserved.
50-78-305. Employee education program.
50-78-306. Departmental information program.

Part 4 — Enforcement and Penalties

50-78-401. No effect on other duties or liabilities.
50-78-402. Complaints, investigation, and penalties.

Chapter Cross-References

Occupational health, Title 50, ch. 70.

Occupational safety, Title 50, ch. 71.

Part 1

General

50-78-101. Short title. This chapter may be known and cited as the "Employee and Community Hazardous Chemical Information Act".

History: En. Sec. 1, Ch. 641, L. 1985.

50-78-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Chemical manufacturer" means an employer in standard industrial classification codes 20 through 39, as defined in the federal Standard Industrial Classification Manual, with a workplace where chemicals are produced for use or distribution.

(2) "Chemical name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the international union of pure and applied chemistry or the chemical abstracts service rules of nomenclature or a name that will clearly identify the chemical for the purpose of conducting a hazard evaluation.

(3) "Common name" means any designation or identification, such as code name, code number, trade name, brand name, or generic name, used to identify a chemical other than by its chemical name.

(4) "Department" means the department of health and environmental sciences provided for in Title 2, chapter 15, part 21.

(5) "Designated representative" means:

(a) the individual or organization to whom an employee gives written authorization to exercise the employee's rights under this chapter; or

(b) a recognized or certified collective bargaining agent who is automatically a designated representative without regard to written employee authorization.

(6) "Distributor" means a business, other than a chemical manufacturer, that supplies hazardous chemicals to other distributors or to employers.

(7) "Employee" means a person who may be exposed to hazardous chemicals in his workplace under normal operating conditions or possible emergencies.

(8) "Employer" means a person, firm, corporation, partnership, association, governmental agency, or other entity engaged in business or providing services that employs workers.

(9) "Exposure" means ingestion, inhalation, absorption, or other contact in the workplace with a hazardous chemical and includes potential, accidental, or possible exposure.

(10) "Hazardous chemical" means, except as provided in 50-78-103:

(a) any element, chemical compound, or mixture of elements or compounds which is a physical hazard or health hazard as defined by subsection (c) of the OSHA standard and which has been identified as such by the federal occupational safety and health administration or the manufacturer and has been so filed with the federal occupational safety and health administration;

(b) any hazardous chemical as defined by subsection (d)(3) of the OSHA standard; or

(c) any emitter of ionizing radiation.

(11) "Label" means any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals.

(12) "Local fire chief" means:

(a) the chief of the municipal fire department or his agent, for any workplace located within a city or town; or

(b) the county rural fire chief or the district rural fire chief or his agent, for any workplace not located within a city or town.

(13) "Manufacturing employer" means an employer with a workplace classified in any standard industrial classification code 20 through 39 who manufactures, uses, or stores a hazardous chemical.

(14) "Material safety data sheet" means a document prepared in accordance with the requirements of the OSHA standard and containing chemical hazard and safe handling information.

(15) "Nonmanufacturing employer" means an employer with a workplace in any standard industrial classification code other than 20 through 39.

(16) "OSHA standard" means the hazard communication standard issued by the federal occupational safety and health administration, codified under 29 C.F.R. 1910.1200, as that statute reads on January 1, 1985.

(17) "Trade secret" means a confidential formula, pattern, process, device, or information, including chemical name or other unique chemical identifier, which is used in an employer's business and which gives the employer an opportunity to obtain an advantage over competitors.

(18) "Work area" means a room or defined space in a workplace where hazardous chemicals are produced, used, or stored and where employees are present.

(19) "Workplace" means an establishment at one geographical location containing one or more work areas.

(20) "Workplace chemical list" means the list of hazardous chemicals developed under this chapter or under subsection (e)(1)(i) of the OSHA standard.

History: En. Sec. 2, Ch. 641, L. 1985.

50-78-103. Applicability — exemptions. (1) The provisions of this chapter do not apply to:

(a) any consumer product intended for personal consumption or use by an employee;

(b) any retail food sale establishment or other retail trade establishment, exclusive of processing and repair areas;

(c) a food, drug, or cosmetic as defined in the Montana Food, Drug, and Cosmetic Act, Title 50, chapter 31;

(d) a source of ionizing radiation that is an exempt or generally licensed material or device, as defined and described in rules adopted under 75-3-202 and implementing 75-3-104 and 75-3-202;

(e) the radiological properties of any source, byproduct, or special nuclear material as defined in sections 11(z), 11(aa), and 11(e)(1) of the federal Atomic Energy Act of 1954; or

(f) sealed containers of hazardous chemicals:

(i) during transportation or while in storage at transportation terminals, so long as existing labels are not removed or defaced and the employer complies with state and federal regulations relating to the transportation of hazardous chemicals; or

(ii) at a facility of a distributor, so long as existing labels are not removed or defaced and the employer distributes material safety data sheets as required under 50-78-203(1).

(2) Employers operating the following workplaces are in compliance with this chapter if they retain and make accessible to employees and, when applicable, to students, all material safety data sheets received or, if no material safety data sheet is received for a hazardous chemical, any other information received on its hazards and safe handling and if the provisions of 50-78-206, 50-78-301(2) through (4), and 50-78-305 are met:

(a) a teaching, research, or testing laboratory, including any associated storeroom;

(b) a clinical laboratory or health care facility as defined in 50-5-101;

(c) a pharmacy as defined in 37-7-101; or

(d) an office of a physician, dentist, osteopath, podiatrist, optometrist, or veterinarian licensed under Title 37.

(3) The provisions of this chapter do not apply to any hazardous chemical subject to the packaging and labeling requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136, et seq., except that a chemical manufacturer producing such hazardous chemicals must comply with all provisions of this chapter.

History: En. Sec. 3, Ch. 641, L. 1985; amd. Sec. 1, Ch. 536, L. 1987.

50-78-104. Relationship to OSHA standard. Any employer complying with the provisions of the OSHA standard, whether or not that employer is regulated by the OSHA standard, is exempt from the provisions of this chapter, except for 50-78-204 and 50-78-301.

History: En. Sec. 4, Ch. 641, L. 1985; amd. Sec. 2, Ch. 536, L. 1987.

Part 2

Notice Required

50-78-201. Notice to employees. Employers shall post adequate notice at locations where notices are normally posted informing employees about their rights under this chapter.

History: **En. Sec. 5, Ch. 641, L. 1985.**

50-78-202. Workplace chemical list. (1) Each employer shall compile and maintain a workplace chemical list. Except as provided in 50-78-205, the workplace chemical list must contain the chemical name of each hazardous chemical in the workplace, cross-referenced to any generally used common name. For chemical mixtures, the chemical name of each hazardous constituent indicated on the material safety data sheet must be provided in parentheses along with the chemical name. The chemical abstracts service registry number, if available from the material safety data sheet, must accompany all chemical names on the workplace chemical list.

(2) The workplace chemical list must indicate the work area in which each hazardous chemical is normally stored or used.

(3) The workplace chemical list may be prepared for the workplace as a whole or for each work area, provided the list is readily available to employees and their designated representatives.

(4) New or newly assigned employees must be made aware of the workplace chemical list before working with or in a work area containing hazardous chemicals.

(5) The workplace chemical list must be updated as necessary but not less than annually.

History: **En. Sec. 6, Ch. 641, L. 1985; amd. Sec. 1, Ch. 15, Sp. L. June 1986.**

50-78-203. Material safety data sheets. (1) Each chemical manufacturer or distributor shall provide a manufacturing or nonmanufacturing employer with the appropriate material safety data sheet upon delivery of a hazardous chemical.

(2) Each employer shall maintain the most current material safety data sheet for each hazardous chemical in the workplace. If a material safety data sheet has not been provided by the chemical manufacturer or distributor at the time a hazardous chemical is delivered to the employer, the employer shall request one in writing within 5 working days. Each employer shall maintain a copy of any correspondence sent or received by the employer in an effort to obtain a material safety data sheet for a hazardous chemical when none was provided by the chemical manufacturer or distributor.

(3) Material safety data sheets must be provided by the employer to any employee or designated representative upon request for review or copying.

History: **En. Sec. 7, Ch. 641, L. 1985.**

50-78-204. Employee rights. (1) An employee who may be exposed to hazardous chemicals must be informed of the potential or actual exposure and must be provided access to the workplace chemical list and to the material safety data sheet for each hazardous chemical. An employer who does not provide an employee with information on a hazardous chemical within 5 working days of the request for information, as required by this chapter, may not require the employee to work with the hazardous chemical until the information is made available.

(2) Each employee must receive training from his employer, as provided in 50-78-305 or in the OSHA standard, on the hazards of workplace chemicals and on protective measures for handling those chemicals.

(3) Each employee required to work with a hazardous chemical must be provided with appropriate personal protective equipment.

(4) No employer shall discharge, cause to be discharged, discipline, discriminate against, or initiate any adverse personnel action against any employee who exercises his rights, testifies, or assists others in exercising their rights or duties under this chapter.

(5) A waiver by an employee of the benefits, rights, or requirements of this chapter is against public policy and is void. An employer's request or requirement that an employee waive any rights under this chapter as a condition of employment is a violation of this chapter.

(6) A designated representative may act on behalf of an employee in pursuing any right or enforcement remedy under this chapter.

History: En. Sec. 10, Ch. 641, L. 1985.

Cross-References

What is unlawful, 28-2-701.

The employment relationship, Title 39, ch. 2.

50-78-205. Trade secret confidentiality. (1) An employer who believes that the name of a hazardous chemical is a trade secret may withhold the chemical name from the material safety data sheet and workplace chemical list only if:

(a) a material safety data sheet, coded to an identifying notation on each container of the hazardous chemical, is available in the work area where the hazardous chemical is present;

(b) the material safety data sheet discloses the properties and effects of the hazardous chemical;

(c) the specific chemical identity is provided to a treating physician or nurse in the event of a medical emergency, as provided for in subsection (i)(2) of the OSHA standard;

(d) the specific chemical identity is provided in nonemergency situations to a health professional providing medical or other occupational health services to an exposed employee, as provided for in subsections (i)(3) through (5) of the OSHA standard; and

(e) the employer claims that the information is a trade secret and that claim can be supported.

(2) If a person believes that disclosing certain trade information on a material safety data sheet will reveal a trade secret, a trade secret claim may be filed with the department, which shall use this procedure to determine the validity of the trade secret claim:

(a) The department shall give notice by certified mail to the person making the claim to submit trade secret substantiation information within 30 days after receipt of such notice. Failure to supply the substantiation information constitutes a waiver of the trade secret claim.

(b) The department has the responsibility to determine the validity of the trade secret claim and shall consider the trade secret substantiation information as confidential.

(c) If the department determines the trade secret claim is not valid, the department shall so notify by certified mail the person making the claim for trade secret protection, stating the basis for the decision. The person making the claim has 30 days after notification by the department to initiate judicial review in the district court of Lewis and Clark County and obtain a preliminary injunction or other court order to prevent disclosure of the trade secret.

(d) The unauthorized use or disclosure of trade secret information submitted under this section is a misdemeanor.

History: En. Sec. 11, Ch. 641, L. 1985.

Cross-References

Uniform Trade Secrets Act, Title 30, ch. 14, part 4.

Misdemeanor — no penalty specified, 46-18-212.

50-78-206. Labels. (1) An employer or distributor may not remove or deface any existing label on a container of a hazardous chemical, except that the chemical name may be concealed under trade secret protection as provided in 50-78-205.

(2) Any portable container intended for an immediate transfer of a hazardous chemical is not required to be labeled.

History: En. Sec. 8, Ch. 641, L. 1985.

Part 3

Information and Education

50-78-301. Emergency and community information. (1) An employer shall comply with the provisions of the federal Emergency Planning and Community Right-to-Know Act of 1986 or be subject to the enforcement provisions thereof.

(2) The local fire chief must be permitted onsite inspection of hazardous chemicals in any workplace, including workplaces under the control of a state agency, for the purposes of planning fire department activities in case of an emergency and reviewing compliance with this chapter. For a workplace that employs fire safety personnel, the local fire chief shall consult with the responsible fire safety official to clarify respective roles and response procedures in the event of an emergency.

(3) As a result of an inspection, the local fire chief may note and report for possible action by the county attorney or other appropriate law enforcement official any violation by an employer of a provision of this chapter or any other law pertaining to hazardous chemicals or fire safety.

(4) The local fire chief shall consult at least annually on safety and emergency considerations with each person responsible for the operation of any research, educational, or testing laboratory workplace. The consultation may result in recommendations or, under the provisions of 50-62-102, orders by the fire chief to be implemented by the laboratory operator to enhance public safety, to reduce the likelihood of emergency incidents, or to improve emergency response in the event of an accident. The person responsible for the operation of the laboratory shall contact the local fire chief at any time there is a significant change in the location or nature of the hazardous chemicals in the workplace, initiation of any new and potentially dangerous

method of processing or reacting hazardous chemicals, or any other operational change affecting emergency response considerations.

History: En. Sec. 9, Ch. 641, L. 1985; amd. Sec. 2, Ch. 15, Sp. L. June 1986; amd. Sec. 3, Ch. 536, L. 1987; amd. Sec. 36, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In second sentence of (4) substituted "50-62-102" for "50-62-108". Amendment effective April 29, 1991.

Cross-References

Role and duties of County Clerk, 7-4-2611.

Duties of chief and assistant chief of fire department, 7-33-4104.

50-78-302 through 50-78-304 reserved.

50-78-305. Employee education program. (1) Each employer shall provide, at least annually, an education and training program for all his employees using or handling hazardous chemicals. Additional instruction must be provided whenever the potential for exposure to hazardous chemicals is altered or whenever new and significant information is received by the employer concerning the hazards of a chemical. New or newly assigned employees must be provided training before working with or in a work area containing a hazardous chemical.

(2) The programs must provide instruction in:

(a) interpreting labels and material safety data sheets and the relationship between these two methods of hazard communication;

(b) the location and acute and chronic effects of hazardous chemicals used by the employees; and

(c) the safe handling, protective equipment, first-aid treatment, and cleanup and disposal procedures for hazardous chemicals.

(3) The employer shall keep a record of the dates of training sessions given to employees and the names of the employees attending.

History: En. Sec. 12, Ch. 641, L. 1985.

50-78-306. Departmental information program. (1) The department may develop and provide to any employer a suitable form of notice to inform employees of their rights under this chapter.

(2) The department may develop an education and training program to assist employers in complying with the provisions of 50-78-204.

(3) The department may develop and distribute a supply of informational leaflets on employer duties, employee rights, the effects of hazardous chemicals, and any other topic related to hazardous chemicals in the workplace.

(4) The department may contract with the Montana university system or any other public or private organization to develop and implement an information program on hazardous chemicals in the workplace.

History: En. Sec. 13, Ch. 641, L. 1985.

Part 4

Enforcement and Penalties

50-78-401. No effect on other duties or liabilities. The provision of information to an employee does not in any way affect the liability of an employer with regard to the health and safety of an employee or other person exposed to hazardous chemicals, nor does it affect the employer's responsibility to take any action to prevent the occurrence of occupational disease or accident as required under any other provision of law. The provision of information to an employee does not affect any other duty of a manufacturer, producer, or formulator to warn ultimate users of a hazardous chemical under any other provision of law.

History: En. Sec. 14, Ch. 641, L. 1985.

Cross-References

Liability, Title 27, ch. 1, part 7.

50-78-402. Complaints, investigation, and penalties. (1) An employee in a workplace covered by the OSHA standard who believes his employer is not complying with the provisions of the OSHA standard may report the alleged violation to the federal occupational safety and health administration.

(2) An employee who believes an employer is not complying with the provisions of this chapter may submit a written complaint to the local health officer, as defined and described in Title 50, chapter 2, part 1.

(3) If the local health officer chooses to act on the complaint, he shall:

(a) within 5 working days of receipt of the complaint, investigate the complaint and, in the event of an apparent violation, seek a corrective response from the employer;

(b) within 10 working days of receipt of a complaint, complete a report that details the findings of the investigation and the response of the employer;

(c) upon completion of the report, submit copies to the employee requesting the investigation, the county attorney, and the employer; and

(d) if the evidence suggests that the employer has violated the provisions of this chapter and the health officer does not receive a corrective response within 10 days of notifying the employer of the violation, file a complaint in the appropriate court or request appropriate action by the county attorney to prosecute the alleged violation.

(4) An employee may submit a written complaint to the county attorney.

(5) The county attorney shall investigate any complaint received and, if a violation appears to have occurred and the county attorney does not receive a corrective response within 10 days of notifying the employer of the violation, initiate appropriate court proceedings to prosecute the violation.

(6) A person found to be knowingly in violation of this chapter is guilty of a misdemeanor. Each day of violation is a separate offense.

History: En. Sec. 15, Ch. 641, L. 1985.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Misdemeanor — penalty specified, 46-18-212.

TITLE 51

RESERVED

TITLE 52

FAMILY SERVICES

Ch.
1. Administration.
2. Children's Services.
3. Adult Services.
4. Services to the Disabled.
5. Corrections.
6. Battered Spouses.

CHAPTER 1

ADMINISTRATION

Part 1 — General

52-1-101. Purpose.
52-1-102. Definitions.
52-1-103. Powers and duties of department.
52-1-104. Department authorized to provide and set standards for supplementary payments.
52-1-105. Institutions in department.
52-1-106 through 52-1-109 reserved.
52-1-110. County contribution for salaries and travel of protective services employees.

Part 2 — Advisory Councils

52-1-201. Local service areas.
52-1-202. State youth services council — membership.
52-1-203. Local youth services advisory councils.

Part 1

General

52-1-101. Purpose. It is the public policy of the legislature to reduce duplication and fragmentation of services to youth, families, and senior citizens by creating a department that shall develop and maintain consolidated programs and services, within available resources, and a planned continuum of services to:

(1) provide protective services to ensure the health, welfare, and safety of children and adults who are in danger of abuse, neglect, or exploitation within communities;

(2) provide for the care, protection, and mental and physical development of youth alleged to be youth in need of supervision or delinquent youth who are referred or committed to the department; and

(3) provide supportive services to enable senior citizens to maintain their independence.

History: En. Sec. 3, Ch. 609, L. 1987.

52-1-102. Definitions. Unless the context requires otherwise, in this title the following definitions apply:

(1) "Department" means the department of family services provided for in 2-15-2401.

(2) "Director" means the director of family services provided for in 2-15-2401.

History: En. Sec. 4, Ch. 609, L. 1987.

52-1-103. Powers and duties of department. The department shall:

(1) administer and supervise all forms of child and adult protective services;

(2) act as the lead agency in coordinating and planning services to children with multiagency service needs;

(3) provide funding for and place youth alleged or adjudicated to be delinquent or in need of supervision who are referred or committed to the department;

(4) provide the following functions, as necessary, for youth in need of care:

(a) intake, investigation, case management, and client supervision;

(b) placement in youth care facilities;

(c) contracting for necessary services;

(d) protective services day care; and

(e) adoption;

(5) administer youth correctional facilities;

(6) provide supervision, care, and control of youth released from a state youth correctional facility;

(7) license youth care facilities, child placing agencies, day-care facilities, community homes for developmentally disabled persons, community homes for severely disabled persons, and adult foster care facilities;

(8) act as lead agency in implementing and coordinating child-care programs and services under the Montana Child Care Act;

(9) administer interstate compacts for children and delinquent youth;

(10) (a) administer child abuse prevention services funded through child abuse grants and the Montana children's trust fund provided for in Title 41, chapter 3, part 7; and

(b) administer elder abuse prevention services;

(11) (a) make a written evaluation of each plan developed by the local youth services advisory councils, as provided in 52-1-203, indicating those portions of each plan that will be implemented by the department, those

portions that will not be implemented, and the reasons for not implementing those portions;

(b) develop a statewide youth services and resources plan that takes into consideration local needs as reflected in plans developed by the local youth services advisory councils;

(12) administer services to the aged;

(13) provide consultant services to:

(a) facilities providing care for needy, indigent, handicapped, or dependent adults; and

(b) youth care facilities;

(14) utilize at maximum efficiency the resources of state government in a coordinated effort to:

(a) provide for children in need of temporary protection or correctional services; and

(b) coordinate and apply the principles of modern institutional administration to the institutions in the department;

(15) subject to the functions of the department of administration, lease or purchase lands for use by institutions in the department and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration:

(a) the needs of all institutions in the department for the food products that can be grown or produced on the lands; and

(b) the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions in the department;

(16) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(17) propose programs with specific goals and objectives to the legislature to meet the projected long-range needs of institutions in the department, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions in the department;

(18) contract, as necessary, with the county board of welfare for administration of child and adult protection services for that county; and

(19) adopt rules necessary to carry out the purposes of 41-3-1126, 41-5-527 through 41-5-529, and this chapter.

History: En. Sec. 5, Ch. 609, L. 1987; amd. Sec. 61, Ch. 83, L. 1989; amd. Sec. 7, Ch. 692, L. 1989; amd. Sec. 8, Ch. 655, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) relating to services to children with multiagency service needs. Amendment effective July 1, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Montana Child Care Act, Title 52, ch. 2, part 7.

52-1-104. Department authorized to provide and set standards for supplementary payments. (1) The department shall have the authority to provide supplementary payments from state funds to recipients of supplemental security income for the aged, blind, or disabled under Title XVI of the Social Security Act of the United States or any future amendments thereto.

(2) The department shall have the authority to establish standards of assistance and apply them uniformly throughout the state and to determine individuals eligible for and the amount of such supplementary payments under federal and state guidelines.

History: (1)En. 71-210.2 by Sec. 1, Ch. 358, L. 1974; Sec. 71-210.2, R.C.M. 1947; (2)En. 71-210.3 by Sec. 2, Ch. 358, L. 1974; Sec. 71-210.3, R.C.M. 1947; R.C.M. 1947, 71-210.2, 71-210.3; Sec. 53-2-204, MCA 1985; redes. 52-1-104 by Sec. 114, Ch. 609, L. 1987.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-1-105. Institutions in department. (1) The following institutions are in the department:

(a) Mountain View school;

(b) Pine Hills school; and

(c) any other institution that provides care and services for delinquent youth.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature.

History: En. Sec. 9, Ch. 609, L. 1987.

52-1-106 through 52-1-109 reserved.

52-1-110. County contribution for salaries and travel of protective services employees. (1) Upon transfer of certain functions of the county welfare department to the department of family services as provided in section 12, Chapter 609, Laws of 1987, the salaries and travel expenses, as provided in 2-18-501 through 2-18-503, of protective services employees must be paid by the department of family services. The board of county commissioners shall reimburse the department of family services from county poor funds in an amount equal to that county's expenditures for salaries, travel expenses, and indirect costs of protective services employees in fiscal year 1987, adjusted for annual inflation.

(2) On or before the 20th day of the month following the month for which payments were made for protective services employees' salaries, travel, and indirect costs, the department of family services shall present to the board of county commissioners a claim for the required reimbursement. The board of county commissioners shall make such reimbursement within 20 days after the presentation of the claim.

History: En. Sec. 14, Ch. 609, L. 1987.

Part 2

Advisory Councils

52-1-201. Local service areas. The department shall organize its field offices into local service areas. The director shall take into consideration geographic boundaries used by local governments, judicial districts, and service agencies when creating local service areas.

History: En. Sec. 6, Ch. 609, L. 1987.

52-1-202. State youth services council — membership. (1) The governor may appoint a state planning and advisory council or designate an existing council to advise the director on policies relating to services to children and youth.

(2) A member of the council must have knowledge of and experience in at least one of the following areas:

(a) services to:

(i) youth in need of care;

(ii) youth in need of supervision;

(iii) delinquent youth;

(iv) emotionally disturbed youth; or

(v) chemically dependent youth; or

(b) domestic violence issues.

(3) Membership of the council must include as many of these areas of expertise as possible.

(4) Members must be compensated and reimbursed as provided for in 2-15-122.

History: En. Sec. 7, Ch. 609, L. 1987.

52-1-203. Local youth services advisory councils. (1) The department shall establish a local youth services advisory council within each local service area to ensure a broad-based community plan for children and youth services within the area. A local youth services advisory council may act in an advisory capacity only. Each local advisory council consists of seven members. The director shall appoint members to each local advisory council. At least two members must be nominated by the county commissioners within the area, and at least two members must be nominated by district court judges within the area. Members of the local advisory councils must be broadly representative of the local service area and may not be employed by or under contract to the department or the youth court.

(2) The department shall provide technical assistance to the local advisory councils as necessary.

(3) Each local advisory council shall:

(a) make an annual written review and evaluation of needs and services within the local service area and provide a copy of the review and evaluation to the state planning and advisory council;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the children and youth within the local service area; and

(c) develop a plan with specific goals and objectives for a system of community-based services for the children and youth within the local service area and provide a copy of the plan to the state planning and advisory council.

(4) Members must be compensated and reimbursed as provided for in 2-15-122.

History: En. Sec. 8, Ch. 609, L. 1987.

CHAPTER 2

CHILDREN'S SERVICES

Part 1 — Child Welfare Services

52-2-101. Definitions.
52-2-102. Recognition of parental control of children.
52-2-103 through 52-2-110 reserved.
52-2-111. Administrative duties of department.
52-2-112. Duty to strengthen child welfare services.
52-2-113. Child rehabilitation — duties of department.
52-2-114. Department to supervise importation and exportation of children.
52-2-115. Department to accept custody of children committed by courts.
52-2-116. Department to assist other agencies.
52-2-117. Indian child welfare specialist.
52-2-118. Emotionally disturbed children — plan — study committee.

Part 2 — Multiagency Children's Services

52-2-201. Purpose.
52-2-202. Definitions.
52-2-203. Cooperative agreement regarding children's services.
52-2-204 through 52-2-210 reserved.
52-2-211. County interdisciplinary child information team.

Part 3 reserved

Part 4 — Child Adoption Agencies

52-2-401. Definitions.
52-2-402. License required — term of license — no fee charged.
52-2-403. General duties of the department.
52-2-404. Requirements for licensure.
52-2-405. Investigation of agencies — cancellation of licenses.
52-2-406. Certified copy of license furnished for adoption proceedings.
52-2-407. Violation of part a misdemeanor — penalty.

Part 5 — Subsidized Adoption

52-2-501. Short title.
52-2-502. Purpose.
52-2-503. Definitions.
52-2-504. Power and duties of department.
52-2-505. Records to be confidential.
52-2-506. Certification as hard to place.
52-2-507. Eligibility for subsidy.
52-2-508. Subsidy agreement.
52-2-509. Amount, duration, and scope of subsidy.
52-2-510. Annual sworn certificate from adoptive parents receiving subsidy.
52-2-511 through 52-2-520 reserved.
52-2-521. Definitions.
52-2-522. Authorization.
52-2-523. Federal participation.
52-2-524. Effect of compacts.
52-2-525. Compacts — required contents.
52-2-526. Compacts — optional contents.
52-2-527. Medical benefits — rules.
52-2-528. Fraudulent obtaining of public assistance.

Part 6 reserved

Part 7 — Child Care

52-2-701. Short title.
52-2-702. Purpose — findings.
52-2-703. Definitions.
52-2-704. Lead agency — duties of department.
52-2-705. Child-care advisory council — membership.
52-2-706 through 52-2-710 reserved.
52-2-711. Resource and referral grant programs.
52-2-712. Repealed.
52-2-713. Payments for eligible children.
52-2-714 through 52-2-720 reserved.
52-2-721. License required — registration required — term of license or registration certificate — no fee charged.
52-2-722. Application for a license or registration certificate.
52-2-723. Requirements for licensure.
52-2-724. Provisional license — provisional registration certificate.
52-2-725. Renewal license — registration certificate.
52-2-726. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and registration certificates — fair hearing.
52-2-727 through 52-2-730 reserved.
52-2-731. Standards for day care.
52-2-732. Licensees or registrants to maintain records, furnish reports, and permit inspections.
52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants.
52-2-734. Fire safety — certification required.
52-2-735. Health protection — certification required.
52-2-736 through 52-2-740 reserved.
52-2-741. Penalty — remedies.

Part 1

Child Welfare Services

Part Cross-References

Assistance to facilitate school attendance, 20-5-107.

Minor parent, 40-8-105.

Child abuse, neglect, and dependency, Title 41, chapter 3.

52-2-101. Definitions. As used in this part, the following definitions apply:

(1) "Child welfare services" means the establishing, extending, and strengthening of child welfare services (especially in predominantly rural areas) for the protection and care of abused, dependent, or neglected children.

(2) "Department" means the department of family services provided for in 2-15-2401.

(3) (a) "Emotionally disturbed child" means a child determined by a psychologist, psychiatrist, licensed social worker, or special education child study team (established under rules adopted by the superintendent of public instruction to implement Title 20, chapter 7, part 4) to have:

(i) an identifiable mental health problem as identified in a nationally recognized classification system or as defined in 20-7-401(5); and

(ii) a substantial impairment, evident for a reasonable length of time, that is characterized by a dysfunction in any of the following areas:

(A) relationships;

(B) behavior;

(C) cognition; or

(D) education.

(b) The nationally recognized classification system referred to in subsection (3)(a)(i) must be one recognized by rules established by the department.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

History: (1), (2)En. Sec. 2, Part 6, Ch. 82, L. 1937; amd. Sec. 25, Ch. 264, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-706, R.C.M. 1947; (3), (4)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-706; amd. Sec. 2, Ch. 447, L. 1987; amd. Sec. 87, Ch. 609, L. 1987; Sec. 53-4-101, MCA 1989; redes. 52-2-101 by Code Commissioner, 1991; amd. Sec. 9, Ch. 249, L. 1991.

Compiler's Comments

1991 Amendment: In (3)(a)(i) changed subsection reference. Amendment effective July 1, 1991.

52-2-102. Recognition of parental control of children. Nothing in this title shall be construed as authorizing any state or county official, agent, or representative, in carrying out any of the provisions of this title, to take charge of any child over the objection of either of the parents of such child or the person standing in loco parentis to such child, except pursuant to a proper court order.

History: En. Subd. (k) and (l), Sec. 4, Part 6, Ch. 82, L. 1937; R.C.M; 1947, 71-713(part); Sec. 53-4-102, MCA 1989; redes. 52-2-102 by Code Commissioner, 1991.

Cross-References

Child abuse, neglect, and dependency, Title 41, chapter 3.

52-2-103 through 52-2-110 reserved.

52-2-111. Administrative duties of department. Subject to the authority and regulations of the department and in cooperation with the federal government, the department shall:

(1) adopt rules necessary to carry out the purposes of this part;

(2) administer or supervise all child welfare services of the state except the child welfare services which are administered by the department of health and environmental sciences and the department of social and rehabilitation services.

History: En. Subd. (a), (b), (c), (d), Sec. 4, Part 6, Ch. 82, L. 1937; Subd. (a) rep. Sec. 10, Ch. 117, L. 1941; amd. Sec. 31, Ch. 121, L. 1974; R.C.M. 1947, 71-708; amd. Sec. 88, Ch. 609, L. 1987; Sec. 53-4-111, MCA 1989; redes. 52-2-111 by Code Commissioner, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-112. Duty to strengthen child welfare services. The department shall make provision for establishing and strengthening child welfare services, including protective services, and for care of children in licensed family foster homes, child care agencies, group homes, or treatment facilities. Payment provided under this section is made under the provisions of 41-3-1122 and 41-3-1115.

History: En. Subd. (e), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 19, Ch. 129, L. 1939; amd. Sec. 32, Ch. 121, L. 1974; R.C.M. 1947, 71-709; amd. Sec. 5, Ch. 297, L. 1981; amd. Sec. 31, Ch. 465, L. 1983; Sec. 53-4-112, MCA 1989; redes. 52-2-112 by Code Commissioner, 1991.

Cross-References

Policy regarding child abuse, neglect, and dependency, 41-3-101.

Responsibility of providing child protective services, 41-3-302.

One-step licensing — inspection by other department, Title 50, ch. 8.

52-2-113. Child rehabilitation — duties of department. The department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of abused, dependent, and neglected children;

(2) use funds allocated or appropriated to the department for the purpose of providing for the special medical or material needs of developmentally disabled or physically handicapped children who are eligible for department programs;

(3) cooperate for the purposes hereof with all reputable child-helping and child-placing agencies; and

(4) inspect and license youth care facilities, child-placing agencies, and adoption agencies.

History: En. Subd. (f), (g), (h), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 9, Ch. 117, L. 1941; amd. Sec. 27, Ch. 264, L. 1955; amd. Sec. 35, Ch. 37, L. 1977; R.C.M. 1947, 71-710; amd. Sec. 1, Ch. 398, L. 1987; amd. Sec. 89, Ch. 609, L. 1987; Sec. 53-4-113, MCA 1989; redes. 52-2-113 by Code Commissioner, 1991.

Cross-References

Minors, Title 41.

Child day-care centers, Title 52, ch. 2, part 7.

52-2-114. Department to supervise importation and exportation of children. The department shall supervise the importation and exportation of children.

History: En. Subd. (i), Sec. 4, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-711; Sec. 53-4-114, MCA 1989; redes. 52-2-114 by Code Commissioner, 1991.

Cross-References

Interstate placement of children, Title 41, ch. 4.

52-2-115. Department to accept custody of children committed by courts. The department shall accept the guardianship or custody of children committed by the courts to the department and arrange for their care.

History: En. Subd. (j), Sec. 4, Part 6, Ch. 82, L. 1937; amd. Sec. 20, Ch. 129, L. 1939; R.C.M. 1947, 71-712; amd. Sec. 90, Ch. 609, L. 1987; Sec. 53-4-115, MCA 1989; redes. 52-2-115 by Code Commissioner, 1991.

Cross-References

Abused, neglected, and dependent youth — dispositional hearing, 41-3-406.

Disposition of delinquent youth and youth in need of supervision, 41-5-523.

52-2-116. Department to assist other agencies. The department shall assist other departments, agencies, and public and private institutions of the state and federal government, when so requested, by performing services in conformity with the purposes of this part and particularly such services and duties as may be assigned to it by any state board composed of state officers, provided such services and duties are legally within the duties of such state board.

History: En. Subd. (k) and (l), Sec. 4, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-713(part); Sec. 53-4-116, MCA 1989; redes. 52-2-116 by Code Commissioner, 1991.

52-2-117. Indian child welfare specialist. The director of the department shall appoint a qualified employee of the department to act as an Indian child welfare specialist. The duties of the specialist include:

(1) developing Indian foster homes and other Indian placement resources;

(2) providing technical advice to tribal, state, and county agencies and district courts on matters pertaining to Indian child welfare;

(3) providing assistance in negotiating cooperative agreements to provide foster care services to Indian children;

(4) conducting training seminars on implementing the Indian Child Welfare Act of 1978 (25 U.S.C. 1901, et seq.);

(5) applying for and accepting grants and other funds for Indian child welfare activities;

(6) developing and maintaining a list of attorneys to represent indigent parents and Indian custodians in Indian child welfare proceedings;

(7) making recommendations to the department on legislation and rules concerning Indian child welfare matters; and

(8) performing other duties concerning Indian child welfare matters as determined by the director.

History: En. Sec. 1, Ch. 259, L. 1987; Sec. 53-4-117, MCA 1989; redes. 52-2-117 by Code Commissioner, 1991.

52-2-118. Emotionally disturbed children — plan — study committee. (1) The department shall develop a comprehensive plan for services for emotionally disturbed children, to be presented to the 51st legislature and each regular session of the legislature thereafter. The department shall recommend a comprehensive service delivery system for emotionally disturbed children, including a plan for gradual implementation of the comprehensive service delivery system.

(2) The plan must identify:

(a) the services needed by emotionally disturbed children;

(b) the number of emotionally disturbed children needing services; and

(c) the interdepartmental responsibility and coordination needed to provide services to emotionally disturbed children.

(3) The department shall appoint a study committee to make recommendations to the department regarding services for emotionally disturbed

children. The members of the committee must be willing to serve without compensation and must include but not be limited to representatives of:

(a) the department;

(b) the department of corrections and human services;

(c) the office of public instruction;

(d) a youth court; and

(e) parents of emotionally disturbed children.

History: En. Sec. 1, Ch. 447, L. 1987; Sec. 53-4-118, MCA 1989; redes. 52-2-118 by Code Commissioner, 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Part 2

Multiagency Children's Services

52-2-201. Purpose. It is the purpose of this part to strengthen and improve children's services in Montana by requiring interagency cooperation regarding the provision of services to children.

History: En. Sec. 1, Ch. 655, L. 1991.

52-2-202. Definitions. For purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Children with multiagency service needs" means children under 18 years of age who have a need for services that are available from more than one state agency.

(2) "Services" means publicly funded social services for children, including public education, child protective services, mental health services, child health care, and related services.

(3) "State agency" means:

(a) the department of family services provided for in 2-15-2401;

(b) the department of health and environmental sciences provided for in 2-15-2101;

(c) the department of corrections and human services provided for in 2-15-2301;

(d) the board of crime control provided for in 2-15-2006;

(e) the department of social and rehabilitation services provided for in 2-15-2201; and

(f) the superintendent of public instruction provided for in 2-15-701.

History: En. Sec. 2, Ch. 655, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

Name Change: Substituted references to Department of Transportation for references to Department of Highways. Amendment effective July 1, 1991.

52-2-203. Cooperative agreement regarding children's services. (1) State agencies shall enter into a cooperative agreement for the purpose of coordinating services to children with multiagency service needs. However, the existing state and community interagency service delivery and planning process for developmental disabilities may not be affected by this section.

(2) The cooperative agreement may:

(a) include a functional definition of "children with multiagency service needs";

(b) identify the responsibilities of each state agency in relation to children with multiagency service needs;

(c) describe agreements to recognize duplicated services and to fill gaps in services to children with multiagency service needs;

(d) define a process for the resolution of disputes between state agencies that relate to specific areas of an agency's service responsibilities;

(e) establish local interagency staffing groups that consist of the following members:

(i) a local representative from each state agency who is authorized to commit resources and make decisions on behalf of the agency he represents;

(ii) representatives of local school districts, youth probation offices, and other public agencies serving youth; and

(iii) representatives of local private youth service agencies;

(f) provide that if a state agency is not able to provide all the services that a child requires, the agency may submit the child's case history to the local staffing group for the provision of multiagency services to the child;

(g) provide that a local interagency staffing group shall meet at the request of any one of its members to consider the provision of services to a child with multiagency service needs;

(h) provide for confidentiality of a child's case records in the same manner as provided in 41-3-205; and

(i) provide for review and necessary revision of the cooperative agreement at least once annually.

(3) For purposes of this part, the department of family services is designated as the lead agency in coordinating and planning services to children with multiagency service needs. Other state agencies shall cooperate with the department of family services to assure minimum duplication and maximum coordination of services for children in Montana.

History: En. Sec. 3, Ch. 655, L. 1991.

52-2-204 through 52-2-210 reserved.

52-2-211. County interdisciplinary child information team. (1) The following persons and agencies operating within a county may by written agreement form a county interdisciplinary child information team:

(a) the youth court;

(b) the county attorney;

(c) the department of family services;

(d) the county superintendent of schools;

(e) the sheriff;

(f) the chief of any police force; and

(g) the superintendents of public school districts.

(2) The persons and agencies signing a written agreement under subsection (1) may by majority vote allow the following persons to sign the written agreement and join the information team:

(a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental health care;

(b) entities operating private elementary and secondary schools;

(c) attorneys; and

(d) a person or entity that has or may have a legitimate interest in one or more children that the information team will serve.

(3) The members of the information team or their designees may form one or more auxiliary teams for the purpose of providing service to a single child, a group of children, or children with a particular type of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

(4) The purpose of the team and written agreement is to facilitate the exchange and sharing of information that one or more team members may be able to use in serving a child in the course of their professions and occupations, including but not limited to abused, neglected, dependent, and delinquent children and youth in need of supervision. Information regarding a child that a team member supplies to other team members or that is disseminated to a team member under 41-3-205, 41-5-602, or 41-5-603 may not be disseminated beyond the team.

(5) The terms of the written agreement must provide for the rules under which the team will operate, the method by which information will be shared, distributed, and managed, and any other matters necessary to the purpose and functions of the team.

History: En. Sec. 1, Ch. 510, L. 1991.

Compiler's Comments

Effective Date: Section 6, Ch. 510, L. 1991, provided that this section is effective July 1, 1991.

Part 3 reserved

Part 4

Child Adoption Agencies

Part Cross-References

Adoption, Title 40, ch. 8, part 1.

Youth residential services, Title 41, ch. 3, part 11.

52-2-401. Definitions. As used in this part, the following definitions apply:

(1) "Person" includes any individual, partnership, voluntary association, or corporation.

(2) "Agency" includes a person not related by blood or marriage to a minor child to be adopted.

(3) "Department" means the department of family services provided for in 2-15-2401.

History: En. Sec. 1, Ch. 179, L. 1949; amd. Sec. 1, Ch. 121, L. 1974; R.C.M. 1947, 10-701; amd. Sec. 175, Ch. 575, L. 1981; amd. Sec. 91, Ch. 609, L. 1987; Sec. 53-4-401, MCA 1989; redes. 52-2-401 by Code Commissioner, 1991.

52-2-402. License required — term of license — no fee charged. No person shall act as an agency for procuring or selecting proposed adoptive homes or placing minor children in proposed adoptive homes or soliciting persons to adopt minor children or arranging for persons to adopt minor children who is not the holder of a license secured under the provisions of this part. Licenses shall be valid for the balance of the calendar year in which issued. No fee shall be charged for such license.

History: En. Sec. 2, Ch. 179, L. 1949; R.C.M. 1947, 10-702; Sec. 53-4-402, MCA 1989; redes. 52-2-402 by Code Commissioner, 1991.

Cross-References

Placement for adoption by parents, 40-8-108, 40-8-109.

52-2-403. General duties of the department. The department is hereby authorized and directed to:

(1) issue licenses to persons now acting as agencies for procuring the adoption of minor children or who may desire to operate as such agency in the future;

(2) prescribe the conditions upon which such licenses shall be issued; and

(3) make such rules for the conduct of the affairs of such agencies as are consistent with the welfare of such minor children.

History: En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-703(part); Sec. 53-4-403, MCA 1989; redes. 52-2-403 by Code Commissioner, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-404. Requirements for licensure. The department must issue licenses to agencies meeting the following minimum requirements:

(1) The chief function of the agency must be the care and placement of minor children.

(2) The agency must operate on a nonprofit basis and be financially responsible in and for its operation.

(3) The directing or managing personnel of the agency must be qualified both on the basis of professional education and personality.

(4) Complete records must be kept of both the minor children and adopting parents with which the agency deals, and such records must be confidential.

(5) The agency must follow the practice of verifying that the child is legally available for adoption and of not completing the adoption until the child has been in the proposed adoptive home for a trial period.

(6) The agency must have and use facilities for making a social study of the child and proposed adoptive parents before placement of the child, particularly with regard to:

(a) the physical and mental health, emotional stability, and personal integrity of the adopting parents and their ability to promote the child's welfare; and

(b) the physical and mental condition of the child and its family background.

(7) The agency must agree to cooperate with courts having jurisdiction in adoptive matters and with other public agencies having to deal with the welfare of minor children.

(8) Any such agency must annually submit a full, complete, and true financial statement to the department, and such statement shall contain a full accounting of the operations of such agency during the preceding year.

History: En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-703(part); Sec. 53-4-404, MCA 1989; redes. 52-2-404 by Code Commissioner, 1991.

52-2-405. Investigation of agencies — cancellation of licenses. (1) The department shall have the power and authority through its duly authorized representative to investigate the operations of any such licensed agencies and to cancel licenses theretofore issued for failure to observe prescribed rules or to maintain minimum requirements as set out in the preceding section of this part. Such agencies shall give to such representatives all information requested and afford them every reasonable facility for observing the operation of such agencies.

(2) When the department finds, upon the basis of the report required by 52-2-404(8) or upon its own investigation, that any such agency has not conducted or is financially incapable of conducting its operations according to the standards established pursuant to this part, then the department is precluded from the issuance of or continuance in effect of any such license for said agency for the subsequent year.

History: (1)En. Sec. 4, Ch. 179, L. 1949; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-704, R.C.M. 1947; (2)En. Sec. 3, Ch. 179, L. 1949; amd. Sec. 1, Ch. 156, L. 1957; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-703, R.C.M. 1947; R.C.M. 1947, 10-703(part), 10-704; Sec. 53-4-405, MCA 1989; redes. 52-2-405 by Code Commissioner, 1991.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested cases, Title 2, ch. 4, part 6.

52-2-406. Certified copy of license furnished for adoption proceedings. Upon the request of any district court, proposed adoptive parent, or agency, a certified copy of any license issued and in good standing shall be furnished by the department for use in any adoption proceeding with which any licensed agency is concerned.

History: En. Sec. 5, Ch. 179, L. 1949; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-705; amd. Sec. 6, Ch. 38, L. 1979; Sec. 53-4-406, MCA 1989; redes. 52-2-406 by Code Commissioner, 1991.

52-2-407. Violation of part a misdemeanor — penalty. (1) Any person who maintains or conducts an agency for procuring the adoption of minor children or assists in the maintaining or conducting of such agency without first obtaining a license is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding $1,000.

(2) Upon the first conviction of a person for violation of this section, the court, instead of imposing the prescribed sentence, may enjoin the offender from any further action in violation of this section.

History: En. Sec. 6, Ch. 179, L. 1949; amd. Sec. 1, Ch. 495, L. 1975; R.C.M. 1947, 10-706; Sec. 53-4-407, MCA 1989; redes. 52-2-407 by Code Commissioner, 1991.

Cross-References

Injunctions, Title 27, ch. 19.

Part 5

Subsidized Adoption

Part Cross-References

Adoption, Title 40, ch. 8, part 1.

52-2-501. Short title. This part may be cited as "The Subsidized Adoption Act of 1977".

History: En. 71-1806 by Sec. 1, Ch. 434, L. 1977; R.C.M. 1947, 71-1806; Sec. 53-4-301, MCA 1989; redes. 52-2-501 by Code Commissioner, 1991.

52-2-502. Purpose. The purpose of this part is to encourage and promote the adoption of children who are hard to place by providing information and assistance in completing the adoption process and financial assistance when necessary to ensure the health and welfare of the hard-to-place child.

History: En. 71-1807 by Sec. 2, Ch. 434, L. 1977; R.C.M. 1947, 71-1807; Sec. 53-4-302, MCA 1989; redes. 52-2-502 by Code Commissioner, 1991.

52-2-503. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of family services.

(2) "Hard-to-place child" means a minor, as defined by 41-1-101, who is a dependent of a public or voluntary licensed child-placing agency, legally free for adoption, and is not likely to be adopted because of:

(a) physical or mental disease or disability;

(b) recognized high risk of physical or mental disease or disability; or

(c) sibling relationship to another child who is eligible for adoption.

History: En. 71-1808 by Sec. 3, Ch. 434, L. 1977; R.C.M. 1947, 71-1808; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-4-303, MCA 1989; redes. 52-2-503 by Code Commissioner, 1991.

52-2-504. Power and duties of department. (1) The department shall establish, administer, and regulate a continuing program of subsidized adoption.

(2) The department shall keep such records as are necessary to evaluate the program in terms of the number of children adopted under the program, the cost of the program, and any other pertinent information.

(3) The department may adopt rules necessary for the proper administration of this part.

History: En. 71-1809 by Sec. 4, Ch. 434, L. 1977; R.C.M. 1947, 71-1809; Sec. 53-4-304, MCA 1989; redes. 52-2-504 by Code Commissioner, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-505. Records to be confidential. All records regarding subsidized adoption shall be confidential and may be disclosed only in accordance with the provisions of 40-8-122.

History: En. 71-1811 by Sec. 6, Ch. 434, L. 1977; R.C.M. 1947, 71-1811(5); Sec. 53-4-306, MCA 1989; redes. 52-2-505 by Code Commissioner, 1991.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

52-2-506. Certification as hard to place. (1) Whenever the conditions of 52-2-503 are found to exist and the foster parents seek to adopt the child, the child shall be certified as hard to place.

(2) In all other cases in which the conditions of 52-2-503 are found to exist and after reasonable efforts have been made and without the use of subsidy no appropriate adoptive family has been found for a child, the department shall certify the child as hard to place.

(3) If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the department evidence of inability to place the child for adoption due to any of the conditions specified in 52-2-503. The agency shall present evidence that reasonable efforts have been made to place the child without subsidy, such as recruitment of potential parents, use of adoption resource exchanges, and referral to appropriate specialized adoption agencies. Upon such a showing, the department shall certify the child as hard to place.

History: En. 71-1810 by Sec. 5, Ch. 434, L. 1977; R.C.M. 1947, 71-1810(1) thru (3); Sec. 53-4-307, MCA 1989; redes. 52-2-506 by Code Commissioner, 1991.

52-2-507. Eligibility for subsidy. Any family which applies for an adoption subsidy, is approved by the department as a suitable adoptive family, is or may be financially unable to meet the special needs of a hard-to-place child as determined by the department, and adopts a hard-to-place child is eligible for subsidy regardless of the domicile or residence of the family at the time of application for adoption, placement, legal decree of adoption, or thereafter.

History: En. 71-1810 by Sec. 5, Ch. 434, L. 1977; R.C.M. 1947, 71-1810(4); Sec. 53-4-308, MCA 1989; redes. 52-2-507 by Code Commissioner, 1991.

52-2-508. Subsidy agreement. (1) When parents are approved for adoption of a child certified as hard to place and before the final decree of adoption is issued, there shall be a written agreement between the family entering into the subsidized adoption and the department. The terms of the adoption subsidy agreement may commence with the adoption placement or at an appropriate time after the adoption decree.

(2) The subsidy agreement shall continue in accordance with its terms until the child reaches majority or for as long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues. Termination or modification of the subsidy agreement may be requested by the adoptive parents or the department at any time.

History: En. 71-1811 by Sec. 6, Ch. 434, L. 1977; R.C.M. 1947, 71-1811(1), (3); Sec. 53-4-309, MCA 1989; redes. 52-2-508 by Code Commissioner, 1991.

52-2-509. Amount, duration, and scope of subsidy. The amount, duration, and scope of the subsidy may vary with the special needs of the child as well as the availability of other resources, including those of the adoptive parents, to meet these needs. The subsidy may be for services only or for the money payments, but in no case may the amount of the subsidy exceed:

(1) in the case of a sibling relationship, that which would be allowable for such child under foster family care; or

(2) in the case of a medical subsidy, the reasonable fee for the services rendered, not to exceed the amount of $2,600 annually.

History: En. 71-1811 by Sec. 6, Ch. 434, L. 1977; R.C.M. 1947, 71-1811(2); Sec. 53-4-310, MCA 1989; redes. 52-2-509 by Code Commissioner, 1991.

52-2-510. Annual sworn certificate from adoptive parents receiving subsidy. When subsidies are for more than 1 year, the adoptive parents shall present an annual sworn certificate that the adopted child remains under their care and the condition that caused the child to be certified continues to exist.

History: En. 71-1811 by Sec. 6, Ch. 434, L. 1977; R.C.M. 1947, 71-1811(4); Sec. 53-4-311, MCA 1989; redes. 52-2-510 by Code Commissioner, 1991.

52-2-511 through 52-2-520 reserved.

52-2-521. Definitions. As used in 52-2-521 through 52-2-528, the following definitions apply:

(1) "Adoption assistance agreement" means an agreement for adoption assistance between adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance, including a subsidy agreement as provided in 52-2-508.

(2) "Adoption assistance state" means the signatory state to an adoption assistance agreement in a particular case.

(3) "Residence state" means the state of which the child is a resident by virtue of the residence of the adoptive parents.

(4) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States.

History: En. Sec. 2, Ch. 274, L. 1991.

Compiler's Comments

Codification Not Followed: Section 9, Ch. 274, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 4, part 3. The Code Commissioner has codified this section as part of Title 52, ch.

2, part 5, to reflect the renumbering of former Title 53, ch. 4, part 3, as Title 52, ch. 2, part 5.

Effective Date: Section 10, Ch. 274, L. 1991, provided that this section is effective on passage and approval. Approved March 29, 1991.

52-2-522. Authorization. The department of family services and the department of social and rehabilitation services are authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states for:

(1) the protection of children on behalf of whom adoption assistance is being provided; and

(2) the provision of procedures for interstate children's adoption assistance payments, including medical payments.

History: En. Sec. 1, Ch. 274, L. 1991.

Compiler's Comments

Codification Not Followed: Section 9, Ch. 274, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 4, part 3. The Code Commissioner has codified this section as part of Title 52, ch. 2, part 5, to reflect the renumbering of former Title 53, ch. 4, part 3, as Title 52, ch. 2, part 5.

Effective Date: Section 10, Ch. 274, L. 1991, provided that this section is effective on passage and approval. Approved March 29, 1991.

52-2-523. Federal participation. Consistent with federal law, the department of family services and the department of social and rehabilitation services, in connection with the administration of services provided and compacts entered into under authority of 52-2-521 through 52-2-528, shall apply for and administer all federal aid for adoption assistance and medical assistance costs in any state plan made pursuant to the Adoption Assistance and Child Welfare Act of 1980 (Public Law 96-272), Titles IV (e) and XIX of the Social Security Act, or any other applicable federal laws.

History: En. Sec. 3, Ch. 274, L. 1991.

Compiler's Comments

Codification Not Followed: Section 9, Ch. 274, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 4, part 3. The Code Commissioner has codified this section as part of Title 52, ch. 2, part 5, to reflect the renumbering of former Title 53, ch. 4, part 3, as Title 52, ch. 2, part 5.

Effective Date: Section 10, Ch. 274, L. 1991, provided that this section is effective on passage and approval. Approved March 29, 1991.

52-2-524. Effect of compacts. A compact entered into under 52-2-521 through 52-2-528 has the force and effect of law.

History: En. Sec. 4, Ch. 274, L. 1991.

Compiler's Comments

Codification Not Followed: Section 9, Ch. 274, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 4, part 3. The Code Commissioner has codified this section as part of Title 52, ch. 2, part 5, to reflect the renumbering of former Title 53, ch. 4, part 3, as Title 52, ch. 2, part 5.

Effective Date: Section 10, Ch. 274, L. 1991, provided that this section is effective on passage and approval. Approved March 29, 1991.

52-2-525. Compacts — required contents. A compact under 52-2-521 through 52-2-528 must contain:

(1) a provision making it available for joinder by all states;

(2) a provision or provisions for withdrawal from the compact upon written notice to the parties, but with a period of 1 year between the date of the notice and the effective date of the withdrawal;

(3) a provision requiring that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who on the effective date of the withdrawal are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) a provision requiring that each:

(a) instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance; and

(b) agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) other provisions as may be appropriate to implement the proper administration of the compact.

History: En. Sec. 5, Ch. 274, L. 1991.

Compiler's Comments

Codification Not Followed: Section 9, Ch. 274, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 4, part 3. The Code Commissioner has codified this section as part of Title 52, ch. 2, part 5, to reflect the renumbering of former Title 53, ch. 4, part 3, as Title 52, ch. 2, part 5.

Effective Date: Section 10, Ch. 274, L. 1991, provided that this section is effective on passage and approval. Approved March 29, 1991.

52-2-526. Compacts — optional contents. A compact under 52-2-521 through 52-2-528 may contain:

(1) provisions establishing procedures and entitlement to medical, developmental, or other social services for the adopted child in accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs of the services; and

(2) other provisions as may be appropriate or incidental to the proper administration of the compact.

History: En. Sec. 6, Ch. 274, L. 1991.

Compiler's Comments

Codification Not Followed: Section 9, Ch. 274, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 4, part 3. The Code Commissioner has codified this section as part of Title 52, ch. 2, part 5, to reflect the renumbering of former Title 53, ch. 4, part 3, as Title 52, ch. 2, part 5.

Effective Date: Section 10, Ch. 274, L. 1991, provided that this section is effective on passage and approval. Approved March 29, 1991.

52-2-527. Medical benefits — rules. (1) The provisions of this section apply only when the compact entered by this state and the other state under 52-2-521 through 52-2-528 provides that the adoption assistance state, whether it be this state or the other state, shall continue medical assistance to children in accordance with the adoption assistance agreements made by the adoption assistance state after the children have changed their residence to this state or to the other state. All other children entitled to medical assistance in this state are eligible to receive it in accordance with the applicable laws and procedures.

(2) A child with special needs residing in this state who is the subject of an adoption assistance agreement with another state is entitled to receive medical assistance identification from this state upon the filing in the office of the department of social and rehabilitation services located in the county of the child's residence a copy of the adoption assistance agreement. Medical assistance identification gained pursuant to this section entitles the holder to processing and payment on claims of the holder in the same manner and pursuant to the same conditions and procedures as other recipients of medical assistance.

(3) The department of social and rehabilitation services shall provide coverage and benefits for a child who is in another state who is covered by an adoption assistance agreement entered into in this state for coverage or benefits, if any, provided for under the adoption assistance agreement made in this state but not provided by the residence state. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state and must be reimbursed for the services. However, there may not be reimbursement for services or benefit amounts covered under any insurance or other third-party medical contract or arrangement held by the child or the adoptive parents. The department of social and rehabilitation services shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided by this subsection are for services for which there is no federal contribution or for which, if federally aided, contributions are not provided by the residence state. Rules adopted pursuant to this subsection must include procedures to be followed for obtaining prior approval for services covered by this subsection when prior approval is required.

History: En. Sec. 7, Ch. 274, L. 1991.

Compiler's Comments

Codification Not Followed: Section 9, Ch. 274, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 4, part 3. The Code Commissioner has codified this section as part of Title 52, ch. 2, part 5, to reflect the renumbering of former Title 53, ch. 4, part 3, as Title 52, ch. 2, part 5.

Effective Date: Section 10, Ch. 274, L. 1991, provided that this section is effective on passage and approval. Approved March 29, 1991.

52-2-528. Fraudulent obtaining of public assistance. The provisions of 53-2-107 on fraudulently obtaining public assistance apply to coverage and benefits that may be obtained under 52-2-521 through 52-2-528.

History: En. Sec. 8, Ch. 274, L. 1991.

Compiler's Comments

Codification Not Followed: Section 9, Ch. 274, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 4, part 3. The Code Commissioner has codified this section as part of Title 52, ch. 2, part 5, to reflect the renumbering of former Title 53, ch. 4, part 3, as Title 52, ch. 2, part 5.

Effective Date: Section 10, Ch. 274, L. 1991, provided that this section is effective on passage and approval. Approved March 29, 1991.

Part 6 reserved

Part 7

Child Care

Part Cross-References

Authorization to levy tax and establish fund for establishment and maintenance of day-care facilities, 7-16-4114.

Preschool pupil immunization requirements, Title 20, ch. 5, part 4.

52-2-701. Short title. This part may be cited as the "Montana Child Care Act".

History: En. Sec. 1, Ch. 692, L. 1989.

52-2-702. Purpose — findings. (1) The purpose of this part is to assure that children requiring day care be provided such food, shelter, security and safety, guidance and direction, nurture and comfort, and learning experiences commensurate to their ages and capabilities so as to safeguard the growth and development of such children, thereby facilitating their proper physical and emotional maturation.

(2) (a) The legislature finds that the number of children living in homes where both parents work or in homes with a single parent who works has increased dramatically over the last decade.

(b) The legislature finds that the availability of quality child care is critical to the self-sufficiency and independence of Montana families, including the growing number of mothers who have young children and who work out of economic necessity.

(c) The legislature further finds that the number of quality child-care arrangements falls far short of the number required for children in need of child-care services.

(d) It is the intent of the legislature that the state promote day care for the purposes of:

(i) improving the quality of, and coordination among, child-care programs and providing additional resources for child-care services;

(ii) promoting the availability and diversity of quality child-care services for all children and families that need such services;

(iii) providing assistance to families whose financial resources are not sufficient to enable them to pay the full costs of necessary child-care services;

(iv) ensuring that parents are not forced by lack of available programs or financial resources to place a child in an unsafe or unhealthy child-care facility; and

(v) assisting people in finding and maintaining employment by lessening the stress related to the lack of adequate child care.

History: (1)En. Sec. 1, Ch. 606, L. 1981; amd. Sec. 92, Ch. 609, L. 1987; amd. Sec. 8, Ch. 692, L. 1989; Sec. 53-4-501(1), MCA 1987; redes. 52-2-702(1) by Code Commissioner, 1989; (2)En. Sec. 2, Ch. 692, L. 1989.

52-2-703. Definitions. In this part, the following definitions apply:

(1) "Child" means a person under 13 years of age.

(2) "Day-care facility" means a person, association, or place, incorporated or unincorporated, that provides day care on a regular basis. It includes a family day-care home, a day-care center, or a group day-care home. The term does not include:

(a) a person who limits care to children who are related to him by blood or marriage or under his legal guardianship; or

(b) any group facility established chiefly for educational purposes that limits its services to children who are 3 years of age or older.

(3) "Day-care center" means a place in which day care is provided to 13 or more children on a regular basis.

(4) "Department" means the department of family services provided for in 2-15-2401.

(5) "Day care" or "child care" means less-than-24-hour out-of-home care for children, whether that care is for daytime or nighttime hours.

(6) "Regular basis" means providing day care to children of separate families for any daily periods of less than 24 hours and within 3 or more consecutive weeks.

(7) "Family day-care home" means a private residence in which day care is provided to three to six children from separate families on a regular basis.

(8) "Group day-care home" means a private residence in which day care is provided to 7 to 12 children on a regular basis.

(9) "Registration" means the process whereby the department maintains a record of all family day-care homes and group day-care homes, prescribes standards, promulgates rules, and requires the operator of a family day-care home or a group day-care home to certify that he has complied with the prescribed standards and promulgated rules.

(10) "Registrant" means the holder of a registration certificate issued by the department in accordance with the provisions of this part.

(11) "Registration certificate" means a written instrument issued by the department to publicly document that the certificate holder has, in writing, certified to the department his compliance with this part and the applicable standards for family day-care homes and group day-care homes.

(12) "License" means a written document issued by the department that the license holder has complied with this part and the applicable standards and rules for day-care centers.

(13) "Licensee" means the holder of a license issued by the department in accordance with the provisions of this part.

(14) (a) "Related by blood or marriage" means the status of a child who is the son, daughter, brother, sister, first cousin, nephew, niece, or grandchild of a person providing child care.

(b) The term includes the status of a child described in subsection (14)(a) in a step or adoptive relationship.

History: En. Sec. 1, Ch. 247, L. 1965; amd. Sec. 2, Ch. 121, L. 1974; R.C.M. 1947, 10-801; amd. Sec. 7, Ch. 38, L. 1979; amd. Sec. 2, Ch. 606, L. 1981; amd. Sec. 92, Ch. 609, L. 1987; amd. Sec. 8, Ch. 692, L. 1989; Sec. 53-4-501(2), MCA 1987; redes. 52-2-703 by Code Commissioner, 1989; amd. Sec. 1, Ch. 404, L. 1991.

Compiler's Comments

1991 Amendment: In definition of child increased age from 12 years to 13 years; at end of definition of day-care facility, at end of (b), inserted "that limits its services to children who are 3 years of age or older"; and inserted definition of related by blood or marriage. Amendment effective July 1, 1991.

52-2-704. Lead agency — duties of department. (1) The department is designated as the lead agency for the purposes of planning, implementing, and coordinating programs under the Montana Child Care Act.

(2) The department shall:

(a) assess child-care needs and resources within the state;

(b) develop a state child-care plan after consultation with the local youth services advisory councils established under 52-1-203 and the child-care advisory council established in 52-2-705;

(c) coordinate child-care programs administered by the department and the departments of social and rehabilitation services, health and environmental sciences, and labor and industry;

(d) issue licenses to persons to receive children into a day-care center on a regular basis;

(e) prescribe the conditions and publish minimum standards upon which licenses and registration certificates are issued;

(f) adopt rules for day-care facilities consistent with the purposes of this part; and

(g) issue registration certificates to a person or persons to receive children into a family day-care home or group day-care home on a regular basis.

(3) The department may:

(a) enter into interagency agreements to administer and coordinate child-care programs;

(b) accept any federal funds made available for the improvement or promotion of child-care services within the state;

(c) administer any state and federal funds that may be appropriated for the purposes of the part.

History: (1), (2)(a) thru (2)(c), (3)En. Sec. 3, Ch. 692, L. 1989; (2)(d) thru (2)(g)En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; R.C.M. 1947, 10-806(part); amd. Sec. 4, Ch. 606, L. 1981; Sec. 53-4-503, MCA 1987; redes. 52-2-702(2)(d) thru (2)(g) by Code Commissioner, 1989.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-705. Child-care advisory council — membership. (1) The governor shall appoint a child-care advisory council to assist the department in carrying out the responsibilities under this part.

(2) The council is composed of not less than 10 members, including parents, child-care providers, representatives of state agencies involved in child care, and other persons interested in child care.

(3) The council shall:

(a) review and coordinate the statewide child-care plan; and

(b) advise the department on all child-care matters.

History: En. Sec. 4, Ch. 692, L. 1989.

52-2-706 through 52-2-710 reserved.

52-2-711. Resource and referral grant programs. (1) There is a grant program established within the department for the allocation of grant money to local child-care resource and referral programs.

(2) The department may award grants to private nonprofit organizations and public organizations that demonstrate the ability to provide child-care resource and referral services.

(3) To be eligible for a grant from the department as a resource and referral agency for a local area, an organization:

(a) shall maintain a data base of child-care services in the community, including day-care facilities and preschools, that the organization continually updates;

(b) shall include on the staff of the organization at least one individual who has expertise in child development;

(c) shall have the capability to provide resource and referral services in the local area;

(d) must be able to respond to requests for information or assistance in a timely fashion;

(e) must be committed to providing services to all segments of the general public;

(f) must be able to provide parents with a checklist to identify quality child-care services;

(g) must be able to provide information on the availability of child-care subsidies;

(h) shall maintain and make available to the public a number of all referrals made by the resource and referral agency; and

(i) shall otherwise satisfy regulations promulgated by the department pursuant to this part.

History: En. Sec. 5, Ch. 692, L. 1989.

Compiler's Comments

Repeal of Termination: Section 18, Ch. 692, L. 1989, which terminated this section June 30, 1991, was repealed by sec. 1, Ch. 618, L. 1991.

52-2-712. Repealed. Sec. 1, Ch. 618, L. 1991.

History: En. Sec. 6, Ch. 692, L. 1989.

52-2-713. Payments for eligible children. The department shall pay a daily rate established by the department and appropriated by the legislature to a day-care facility licensed or registered by the department for each child receiving day-care service and certified eligible by the department to receive day-care services.

History: En. 10-812 by Sec. 1, Ch. 167, L. 1975; R.C.M. 1947, 10-812; amd. Sec. 1, Ch. 662, L. 1979; amd. Sec. 15, Ch. 606, L. 1981; Sec. 53-4-514, MCA 1987; redes. 52-2-713 by Code Commissioner, 1989.

52-2-714 through 52-2-720 reserved.

52-2-721. License required — registration required — term of license or registration certificate — no fee charged. (1) No person, group of persons, or corporation shall:

(a) establish or maintain a day-care center for children unless licensed to do so by the department;

(b) operate a family day-care home or group day-care home without first procuring a family day-care or group day-care registration certificate from the department.

(2) The license and registration certificate shall set forth the ages and numbers of children for whom day care may be provided.

(3) The applicant's own children must be included in the manner provided for in department regulations in the total number of children to be cared for under the license or registration certificate.

(4) Licenses or registration certificates shall be issued for periods not to exceed 1 year. The department may not charge a fee to issue a license or registration certificate.

History: En. Sec. 2, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-802; amd. Sec. 3, Ch. 606, L. 1981; amd. Sec. 9, Ch. 692, L. 1989; Sec. 53-4-502, MCA 1987; redes. 52-2-721 by Code Commissioner, 1989.

Cross-References

One-step licensing — inspection by other department, Title 50, ch. 8.

52-2-722. Application for a license or registration certificate. (1) Application for a license or registration certificate shall be made to the department in the county in which the applicant lives on forms prescribed by the department.

(2) Applications for a license or registration certificate by Indians residing on Indian reservations shall be made through the tribal governing body on forms prescribed by the department. Applications made through a tribal governing body shall be accompanied by a request by the tribal governing body that the department investigate to determine whether a license or registration certificate should be granted.

(3) Within 30 days of receipt of the application, the department shall determine whether a license or registration certificate should be issued.

History: En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; R.C.M. 1947, 10-806(part); amd. Sec. 8, Ch. 606, L. 1981; amd. Sec. 10, Ch. 692, L. 1989; Sec. 53-4-507, MCA 1987; redes. 52-2-722 by Code Commissioner, 1989.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 3.

52-2-723. Requirements for licensure. (1) The department shall include in the minimum standards for day-care centers the following requirements:

(a) The applicant, his employees, and all those persons who will come in direct contact with the children are of good character.

(b) The staff of the day-care facility is sufficient in number as provided by rule to provide adequate supervision and care of the children in the facility.

(c) Essential programs and practices carried on by the facility staff are developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children.

(d) Applicant and staff are qualified by practical experience or education or training to give good care and treatment to the children.

(e) Intake records are kept on each child admitted for care.

(f) The applicant and staff limit admissions to the maximum number indicated on the current license.

(g) The applicant will arrange for the necessary precautions to guard against communicable diseases.

(h) Public liability insurance and fire insurance are currently in force for the protection of the operator, his staff, and the facility.

(i) Specify the ages and numbers of children that may be cared for in a day care facility.

(2) It is the duty of the department or its authorized representative to assist applicants in meeting the minimum requirements.

History: (1)En. Sec. 6, Ch. 247, L. 1965; amd. Sec. 6, Ch. 121, L. 1974; amd. Sec. 1, Ch. 293, L. 1977; Sec. 10-806, R.C.M. 1947; (2)En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; Sec. 10-809, R.C.M. 1947; R.C.M. 1947, 10-806(part), 10-809(part); amd. Sec. 9, Ch. 606, L. 1981; Sec. 53-4-508, MCA 1987; redes. 52-2-723 by Code Commissioner, 1989.

Cross-References

Casualty insurance, Title 33, ch. 23.

Property insurance, Title 33, ch. 24.

Duty to report cases of communicable disease, 37-2-301.

52-2-724. Provisional license — provisional registration certificate. (1) The department may issue a provisional license or provisional registration certificate for a period which may not exceed 6 months if it finds that a day-care facility or applicant does not meet all standards established by the department, as long as the facility or applicant is attempting to meet the minimum standards.

(2) The department may not waive the requirement that a day-care center be certified under the provisions of 52-2-734 and 52-2-735.

(3) The department may not waive the requirement that a day-care facility have current and adequate public liability insurance and fire insurance.

History: En. Sec. 7, Ch. 247, L. 1965; amd. Sec. 7, Ch. 121, L. 1974; R.C.M. 1947, 10-807; amd. Sec. 9, Ch. 38, L. 1979; amd. Sec. 10, Ch. 606, L. 1981; Sec. 53-4-509, MCA 1987; redes. 52-2-724 by Code Commissioner, 1989.

52-2-725. Renewal license — registration certificate. If a licensed or registered day-care facility desires to renew a license or registration certificate, the request for renewal shall be made in writing, on forms prescribed by the department, in the county in which the applicant lives, 30 days prior to the expiration of its license or registration certificate.

History: En. Sec. 8, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-808; amd. Sec. 11, Ch. 606, L. 1981; Sec. 53-4-510, MCA 1987; redes. 52-2-725 by Code Commissioner, 1989.

52-2-726. Denial, cancellation, reduction, revocation, and nonrenewal of licenses and registration certificates — fair hearing. (1) The department, after written notice to the applicant, licensee, or registrant, may deny, suspend, cancel, reduce, modify, or revoke a license or registration certificate upon finding that:

(a) any of the applicable conditions set forth in this part as prerequisites for the issuance of a license or registration certificate no longer exist;

(b) the licensee or registrant is no longer in compliance with the minimum standards prescribed by the department; or

(c) the license or registration certificate was issued upon fraudulent or untrue representation.

(2) The applicant, licensee, or registrant by written request may invoke the opportunity for hearing on the department's action by requesting a hearing within 10 days of notice of department action. The hearing shall be conducted according to the department's rules.

History: En. Sec. 10, Ch. 247, L. 1965; amd. Sec. 8, Ch. 121, L. 1974; R.C.M. 1947, 10-810; amd. Sec. 14, Ch. 606, L. 1981; Sec. 53-4-513, MCA 1987; redes. 52-2-726 by Code Commissioner, 1989.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested cases, Title 2, ch. 4, part 6.

Fraud, 28-2-404 through 28-2-406.

Unsworn falsification to authorities, 45-7-203.

52-2-727 through 52-2-730 reserved.

52-2-731. Standards for day care. In developing standards, the department shall seek the advice and assistance of the department of health and environmental sciences and superintendent of public instruction, representatives of day-care facilities, specialists in child care, and representatives of parent groups who use the services of day-care facilities. The standards may pertain to:

(1) character, suitability, and qualifications of an applicant and other persons directly responsible for the care of children;

(2) the number of individuals or staff required for adequate supervision and care of children in day-care facilities;

(3) child-care programs and practices necessary to ensure the health, safety, safety in transportation, development, and well-being of children;

(4) adequate and appropriate admission policies;

(5) adequacy of physical facilities and equipment;

(6) general financial ability and competence of an applicant to provide necessary care for children and maintain prescribed standards;

(7) the ages and numbers of children that may be cared for in a day-care facility.

History: En. Sec. 3, Ch. 247, L. 1965; amd. Sec. 3, Ch. 121, L. 1974; R.C.M. 1947, 10-803; amd. Sec. 5, Ch. 606, L. 1981; Sec. 53-4-504, MCA 1987; redes. 52-2-731 by Code Commissioner, 1989.

Compiler's Comments

1991 Administrative Rule Amendment: The Legislature in sec. 1, Ch. 95, L. 1991, directed the Department to amend Rule 11.14.502, ARM, to eliminate restrictions on the use of nondisposable diapers. Legislation requiring rule amendment effective March 20, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-732. Licensees or registrants to maintain records, furnish reports, and permit inspections. It shall be the duty of every applicant for a license or for registration and every licensee or registrant to give the right of entrance to and inspection of premises to representatives of the department at reasonable times, to keep and maintain such records as the department may prescribe, to permit inspection of these records, and to report to the department such facts as may be required on forms furnished by the department.

History: En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-809(part); amd. Sec. 13, Ch. 606, L. 1981; Sec. 53-4-512, MCA 1987; redes. 52-2-732 by Code Commissioner, 1989.

52-2-733. Periodic visits to facilities by department — investigations — consultation with licensees and registrants. (1) The department or its authorized representative shall make periodic visits to all licensed day-care centers to ensure that minimum standards are maintained.

(2) The department may investigate and inspect the conditions and qualifications of any day-care center, group day-care home, or family day-care home seeking or holding a license or registration certificate under the provisions of this part.

(3) The department must visit and inspect at least 20% of all registered family day-care homes and group day-care homes in each of the governor's planning regions annually.

(4) The department shall make annual unannounced visits to day-care centers.

(5) Upon request of the department, the department of health and environmental sciences or the state fire prevention and investigation program of the department of justice shall inspect any day care facility for which a license or registration certificate is applied for or issued and shall report its findings to the department.

(6) Upon request, the department shall give consultation to every licensee and registrant who desires to upgrade the services of his program.

(7) Nothing in this section may be construed to require the department to conduct an inspection of each day-care facility applying for a registration certificate under the provisions of this part.

History: En. Sec. 9, Ch. 247, L. 1965; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 10-809(part); amd. Sec. 12, Ch. 606, L. 1981; amd. Sec. 11, Ch. 692, L. 1989; Sec. 53-4-511, MCA 1987; redes. 52-2-733 by Code Commissioner, 1989; amd. Sec. 34, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In (5), near middle, substituted "prevention and investigation program of the department of justice" for "marshal or his designee". Amendment effective April 29, 1991.

Cross-References

Department of Health — sanitary inspections, 50-1-203.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

52-2-734. Fire safety — certification required. (1) The state fire prevention and investigation program of the department of justice shall adopt and enforce rules for the protection of children in day-care centers from fire hazards and arrange for such inspections and investigations as it considers necessary.

(2) Before a license can be issued to operate a day-care center, each applicant shall submit to the department a certificate of approval from the state fire prevention and investigation program of the department of justice indicating that fire safety rules have been met.

History: En. Sec. 4, Ch. 247, L. 1965; amd. Sec. 4, Ch. 121, L. 1974; R.C.M. 1947, 10-804; amd. Sec. 8, Ch. 38, L. 1979; amd. Sec. 6, Ch. 606, L. 1981; amd. Sec. 11, Ch. 503, L. 1985; Sec. 53-4-505, MCA 1987; redes. 52-2-734 by Code Commissioner, 1989; amd. Sec. 35, Ch. 706, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning after "fire", substituted "prevention and investigation program" for "marshal"; and in (2), near middle, substituted "state fire prevention and investigation program" for "marshal" and after "justice" deleted "or his designee". Amendment effective April 29, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

State fire prevention and investigation program — advisory council, 2-15-2005.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

52-2-735. Health protection — certification required. (1) The department of health and environmental sciences shall adopt rules for the protection of children in day-care centers from the health hazards of inadequate food preparation, poor nutrition, and communicable diseases. Rules adopted by the department must include rules requiring children under 5 years of age to be immunized against Haemophilus influenza type "b" before being admitted for care in the facility unless an exemption has been claimed as provided in 20-5-405.

(2) Local public health authorities shall arrange to provide training to day-care center providers and employees regarding health hazards. Upon successful completion of the training the local public health authorities shall issue certificates to the providers and employees.

(3) In lieu of training, local public health authorities may elect to inspect facilities and issue certificates of approval to child-care center providers.

(4) Each applicant for a license to operate a day-care center shall submit to the department a certificate issued pursuant to subsection (2) or (3) before the department will issue a license.

(5) The local public health authority may charge the applicant a reasonable fee, not to exceed $25, for any inspection necessary to issue a certificate of approval, or a fee not to exceed the documented cost for training it provides under this section.

History: En. Sec. 5, Ch. 247, L. 1965; amd. Sec. 5, Ch. 121, L. 1974; R.C.M. 1947, 10-805; amd. Sec. 7, Ch. 606, L. 1981; Sec. 53-4-506, MCA 1987; redes. 52-2-735 by Code Commissioner, 1989; amd. Sec. 3, Ch. 165, L. 1991.

Compiler's Comments

1991 Amendment: In (1) inserted second sentence regarding rules to be adopted requiring immunization against Haemophilus influenza type "b". Amendment effective March 26, 1991.

Effective Date: Section 4(2), Ch. 165, L. 1991, provided: "[Section 3 [52-3-735] and this section] are effective on passage and approval [approved March 26, 1991], except that rules adopted by the department of health and environmental sciences may not be implemented prior to July 1, 1991."

1991 Administrative Rule Amendment: The Legislature in sec. 2, Ch. 95, L. 1991, directed the Department to amend Rule 16.24.410, ARM, to eliminate restrictions on the use of nondisposable diapers. Legislation requiring rule amendment effective March 20, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-2-736 through 52-2-740 reserved.

52-2-741. Penalty — remedies. (1) A person, group of persons, or corporation who establishes or maintains a day-care facility or assists in conducting or maintaining a day-care facility without first obtaining a license or registration certificate from the department as provided for in this part is guilty of a misdemeanor and upon conviction is punishable by a fine not to exceed $500.

(2) (a) If the department is advised or has reason to believe that a person, group of persons, or corporation is operating a day-care facility without a license or registration certificate, it shall make an investigation to ascertain the facts. If the department finds that the day-care facility is being or has been operated without a license or registration certificate, it may report the results of its investigation to the attorney general or the county attorney of the county where the day-care facility is being operated for prosecution and request that an injunction be issued against the facility until a license or certificate is issued.

(b) The department may institute any action necessary to enforce compliance with this part or any order or rule of the department under this part or to obtain a judicial interpretation of any of the foregoing.

(c) The department may, by its own attorney or counsel, any county attorney, or the attorney general, initiate an action in the district court of the appropriate county and be represented by such representative on appeal to the supreme court of Montana.

History: (1)En. Sec. 18, Ch. 606, L. 1981; (2)En. Sec. 11, Ch. 247, L. 1965; amd. Sec. 9, Ch. 121, L. 1974; R.C.M. 1947, 10-811; amd. Sec. 16, Ch. 606, L. 1981; amd. Sec. 12, Ch. 692, L. 1989; Sec. 53-4-515, MCA 1987; redes. 52-2-741 by Code Commissioner, 1989.

Cross-References

Injunctions, Title 27, ch. 19.

CHAPTER 3

ADULT SERVICES

Part 1 — Problems of Aging

52-3-101. Functions of department of family services.
52-3-102. Grants and gifts to department.
52-3-103. Designation of area agencies.
52-3-104 through 52-3-110 reserved.
52-3-111. Senior citizens' legislature.

Part 2 — Protective Services

52-3-201. Short title.
52-3-202. Definitions.
52-3-203. Purpose.
52-3-204. Duties of department.
52-3-205. Departmental authority.
52-3-206. Annual reports.
52-3-207. Protective services not creating guardianship or conservatorship.

Part 3 — Adult Foster Family Care

52-3-301. Short title.
52-3-302. Definitions.
52-3-303. Purpose.
52-3-304. Standards for adult foster family care homes.
52-3-305. Limitation on care offered.
52-3-306 through 52-3-310 reserved.
52-3-311. License required.
52-3-312. License application — investigation.
52-3-313. Inspections — records — reports.
52-3-314. Penalty — remedies.

Part 4 — State Plan on Aging

52-3-401. Definitions.
52-3-402. Purpose.
52-3-403. Existing planning and service areas grandfathered — exception.
52-3-404. State plan on aging.
52-3-405. Designation of planning and service areas.
52-3-406. Departmental rules.

Part 5 — Montana Older Americans Act

52-3-501. Short title.
52-3-502. Definitions.
52-3-503. Purpose and policy.
52-3-504. Services to be provided.
52-3-505. Role of department.
52-3-506. Coordination with federal legislation.

Part 6 — Ombudsman Services

52-3-601. Purpose.
52-3-602. Definitions.
52-3-603. Office of legal and long-term care ombudsman services.
52-3-604. Access to long-term care facilities.
52-3-605. Enforcement of access.

Part 7 reserved

Part 8 — Montana Elder Abuse Prevention Act

52-3-801. Short title.
52-3-802. Legislative findings and purpose.
52-3-803. Definitions.
52-3-804. Duties of department of family services.
52-3-805. Adult protective service teams.
52-3-806 through 52-3-810 reserved.
52-3-811. Reports.
52-3-812. Content of report.
52-3-813. Confidentiality.
52-3-814. Immunity from civil and criminal liability.
52-3-815. Evidence of abuse or neglect to be gathered and submitted.

52-3-816 through 52-3-820 reserved.
52-3-821. Admissibility of evidence.
52-3-822 through 52-3-824 reserved.
52-3-825. Penalties.

Chapter Cross-References

Mature Defensive Driving Act, 33-16-221 through 33-16-225.

Part 1

Problems of Aging

Part Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

52-3-101. Functions of department of family services. The department of family services shall:

(1) consult with and advise organized efforts by communities, organizations, associations, and groups that are working toward any forms of assistance to problems of aging;

(2) study and identify problems of aging;

(3) review existing programs for the aging and make recommendations to the governor and the legislature for improvements in such programs;

(4) encourage the sponsorship of community projects which will seek to make optimum use of the time and talents of retired persons;

(5) coordinate, through area councils on aging, the delivery of community-based care, including but not limited to home health care, homemaker services, foster home care, nutrition, transportation, winterization, information and referral, and recreation.

History: En. Sec. 4, Ch. 73, L. 1965; amd. Sec. 4, Ch. 12, L. 1967; Sec. 82-3504, R.C.M. 1947; amd. and redes. 71-2001 by Sec. 43, Ch. 121, L. 1974; R.C.M. 1947, 71-2301; amd. Sec. 1, Ch. 665, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-101, MCA 1989; redes. 52-3-101 by Code Commissioner, 1991.

Cross-References

Adult protective service teams, 52-3-805.

Community-based long-term care facilities — powers and duties of department, 53-6-402.

52-3-102. Grants and gifts to department. The department of family services may receive on behalf of the state any grant from the federal government or any grant or gift from any source and accept the grant or gift so that the title shall pass to the state. All grants, grants-in-aid, or gifts shall be deposited with the state treasurer and shall be continuously available to the department.

History: En. Sec. 5, Ch. 73, L. 1965; amd. Sec. 5, Ch. 12, L. 1967; Sec. 82-3505, R.C.M. 1947; amd. and redes. 71-2002 by Sec. 44, Ch. 121, L. 1974; R.C.M. 1947, 71-2302; amd. Sec.

11, Ch. 609, L. 1987; Sec. 53-5-102, MCA 1989; redes. 52-3-102 by Code Commissioner, 1991.

52-3-103. Designation of area agencies. (1) The department of family services may designate as an area agency in a geographical area an entity that demonstrates its ability to:

(a) develop and administer an area plan for a comprehensive and coordinated system of services; and

(b) serve as the advocate and focal point for older persons in the planning and service area.

(2) Such an entity may be but is not limited to:

(a) an established office on aging that operates within the geographical area;

(b) an office or agency of a unit of general purpose local government, except a county welfare office or department;

(c) any combination of such offices or units of general purpose local governments; or

(d) any other public or private nonprofit agency, except a regional or local agency of the state.

History: En. Sec. 1, Ch. 337, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-103, MCA 1989; redes. 52-3-103 by Code Commissioner, 1991.

Cross-References

Older Americans Act planning and service areas — state plan on aging, Title 52, ch. 3, part 4.

52-3-104 through 52-3-110 reserved.

52-3-111. Senior citizens' legislature. (1) The department of family services may contract with a senior citizens' organization for the purpose of establishing a mock legislature to be held in the year preceding the legislative session.

(2) The contract entered into with the senior citizens' organization must provide that such organization match on a one-to-two (organization to department) ratio any amount contracted for.

(3) The department of family services shall cooperate with the department of administration in assisting the senior citizens' organization designated to establish the mock legislature.

History: En. Secs. 1, 2, Ch. 638, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-111, MCA 1989; redes. 52-3-111 by Code Commissioner, 1991.

Part 2

Protective Services

52-3-201. Short title. This part may be cited as the "Protective Services Act for Aged Persons or Disabled Adults".

History: En. 71-1914 by Sec. 1, Ch. 232, L. 1975; R.C.M. 1947, 71-1914; Sec. 53-5-201, MCA 1989; redes. 52-3-201 by Code Commissioner, 1991.

52-3-202. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of family services.

(2) "Aged person" means an aged person as defined by the department.

(3) "Disabled adult" means a person 18 years of age or over who is defined by the department as disabled but not developmentally disabled.

(4) "Protective services" means assistance to an aged person or disabled adult in obtaining the services offered by the department.

History: En. 71-1915 by Sec. 2, Ch. 232, L. 1975; R.C.M. 1947, 71-1915; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-202, MCA 1989; redes. 52-3-202 by Code Commissioner, 1991.

52-3-203. Purpose. To ensure that aged persons or disabled adults in the state be afforded the opportunity to receive protective services and to implement certain provisions of the federal government's Title XX, Social Services Amendments of 1972, this legislature declares the department to be recognized as the public agency responsible for providing those services.

History: En. 71-1916 by Sec. 3, Ch. 232, L. 1975; R.C.M. 1947, 71-1916; Sec. 53-5-203, MCA 1989; redes. 52-3-203 by Code Commissioner, 1991.

52-3-204. Duties of department. The department shall be responsible for acting on requests for protective services from aged persons or disabled adults or from relatives, friends, or other reputable persons requesting those services on behalf of an aged person or disabled adult.

History: En. 71-1917 by Sec. 4, Ch. 232, L. 1975; R.C.M. 1947, 71-1917; Sec. 53-5-204, MCA 1989; redes. 52-3-204 by Code Commissioner, 1991.

52-3-205. Departmental authority. The department may implement a program for protective services by establishing appropriate rules which are not inconsistent with the department's activities.

History: En. 71-1918 by Sec. 5, Ch. 232, L. 1975; R.C.M. 1947, 71-1918; Sec. 53-5-205, MCA 1989; redes. 52-3-205 by Code Commissioner, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-3-206. Annual reports. The department shall make annual reports on the number of people served by this part and the type of protective services made available to the aged persons and disabled adults of Montana.

History: En. 71-1919 by Sec. 6, Ch. 232, L. 1975; R.C.M. 1947, 71-1919; Sec. 53-5-206, MCA 1989; redes. 52-3-206 by Code Commissioner, 1991.

52-3-207. Protective services not creating guardianship or conservatorship. The provision of protective services does not create a guardianship or conservatorship relationship between the department and the aged person unless a guardianship or conservatorship is created in accordance with the requirements of Title 72, chapter 5, part 3 or 4.

History: En. Sec. 7, Ch. 343, L. 1981; Sec. 53-5-207, MCA 1989; redes. 52-3-207 by Code Commissioner, 1991.

Part 3

Adult Foster Family Care

Part Cross-References

Personal care facilities, 50-5-225 through 50-5-230.

52-3-301. Short title. This part may be cited as the "Adult Foster Family Care Act".

History: En. 71-2303 by Sec. 1, Ch. 364, L. 1975; R.C.M. 1947, 71-2303; Sec. 53-5-301, MCA 1989; redes. 52-3-301 by Code Commissioner, 1991.

52-3-302. Definitions. As used in this part, the following definitions apply:

(1) "Adult foster family care homes" means private homes owned by one or more persons 18 years of age or older which offer light personal care or custodial care to disabled adults who are not related to the owner by blood or marriage or which offer light personal care or custodial care to aged persons.

(2) "Aged person" means a person defined by the department as aged.

(3) "Custodial care" means providing a sheltered, family-type setting for an aged person or disabled adult so as to provide for his basic needs of food and shelter and having a specific person available to help him meet his basic needs.

(4) "Department" means the department of family services.

(5) "Disabled adult" means a person 18 years of age or older defined by the department as disabled.

(6) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration, but not administration of prescriptive medications.

(7) "Skilled nursing care" means 24-hour care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician.

History: En. 71-2304 by Sec. 2, Ch. 364, L. 1975; amd. Sec. 40, Ch. 37, L. 1977; R.C.M. 1947, 71-2304; amd. Sec. 2, Ch. 665, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-302, MCA 1989; redes. 52-3-302 by Code Commissioner, 1991.

52-3-303. Purpose. (1) In order to ensure the proper care of aged persons or disabled adults in foster family care homes and to implement provisions of Title XX of the Social Security Act, Public Law 93-647, the department may obtain, license, and supervise adult foster family care homes for four or fewer aged persons or disabled adults in need of such care.

(2) Subsection (1) is not intended to apply to those persons who voluntarily live together in a private home and agree to share living expenses and responsibilities.

History: En. 71-2305 by Sec. 3, Ch. 364, L. 1975; R.C.M. 1947, 71-2305; amd. Sec. 10, Ch. 38, L. 1979; amd. Sec. 3, Ch. 665, L. 1979; amd. Sec. 5, Ch. 102, L. 1989; Sec. 53-5-303, MCA 1989; redes. 52-3-303 by Code Commissioner, 1991.

52-3-304. Standards for adult foster family care homes. The department may establish by rules standards by which private residences may be licensed as adult foster family care homes. These standards shall provide for the safety and comfort of the residents and are subject to the advice and recommendations of the state fire prevention and investigation program of the department of justice in relation to fire and safety requirements.

History: En. 71-2306 by Sec. 4, Ch. 364, L. 1975; R.C.M. 1947, 71-2306; amd. Sec. 11, Ch. 38, L. 1979; amd. Sec. 3, Ch. 199, L. 1979; Sec. 53-5-304, MCA 1989; redes. 52-3-304 by Code Commissioner, 1991; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

One-step licensing — inspection by other department, Title 50, ch. 8.

Duty of person maintaining or employed by adult foster care home to report violations of Montana Elder Abuse Prevention Act, 52-3-811.

52-3-305. Limitation on care offered. The type of care offered by adult foster family care homes for the purposes of this part is light personal care or custodial care and does not include skilled nursing care.

History: En. 71-2307 by Sec. 5, Ch. 364, L. 1975; R.C.M. 1947, 71-2307; Sec. 53-5-305, MCA 1989; redes. 52-3-305 by Code Commissioner, 1991.

Cross-References

"Skilled nursing care" defined, 50-5-101.

52-3-306 through 52-3-310 reserved.

52-3-311. License required. No person, group of persons, or corporation may establish or operate an adult foster family care home unless licensed by the department. No fee may be charged for the license.

History: En. Sec. 1, Ch. 102, L. 1989; Sec. 53-5-311, MCA 1989; redes. 52-3-311 by Code Commissioner, 1991.

52-3-312. License application — investigation. (1) Application for a license must be made to the department on forms prescribed by the department.

(2) Within 30 days of receipt of the application, the department shall investigate the following to determine whether a license should be issued:

(a) the character, suitability, and qualifications of the applicant and persons directly responsible for the care of residents;

(b) the programs and practices necessary to ensure the health, safety, and well-being of the residents; and

(c) the adequacy and safety of the applicant's physical facilities.

History: En. Sec. 2, Ch. 102, L. 1989; Sec. 53-5-312, MCA 1989; redes. 52-3-312 by Code Commissioner, 1991.

52-3-313. Inspections — records — reports. Each applicant and licensee shall:

(1) give the right of entry to and allow the inspection of premises by representatives of the department;

(2) keep and maintain records as prescribed by the department and permit departmental inspection of these records; and

(3) report required facts on forms furnished by the department.

History: En. Sec. 3, Ch. 102, L. 1989; Sec. 53-5-313, MCA 1989; redes. 52-3-313 by Code Commissioner, 1991.

52-3-314. Penalty — remedies. (1) A person, group of persons, or corporation that establishes or operates an adult foster family care home without first obtaining a license from the department as provided for in this part is guilty of a misdemeanor and, upon conviction, may be punished by a fine not to exceed $500.

(2) The department shall investigate if it is advised or has reason to believe that a person, group of persons, or corporation is operating an adult foster family care home without a license. If the department finds that the adult foster family care home is being or has been operated without a license, it may report the results of the investigation to the attorney general or to the county attorney of the county in which the home is being operated and may request that an injunction be issued against the operator until a license is obtained.

(3) The department may, through its attorney, any county attorney, or the attorney general, institute any action necessary to enforce compliance with this part.

History: En. Sec. 4, Ch. 102, L. 1989; Sec. 53-5-314, MCA 1989; redes. 52-3-314 by Code Commissioner, 1991.

Part 4

State Plan on Aging

Part Cross-References

Area agencies for aging services, 52-3-103.

52-3-401. Definitions. As used in this part, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of family services.

(2) "Older Americans Act" means the Older Americans Act of 1965, as amended, 42 U.S.C. 3001, et seq.

(3) "Planning and service area" means a geographic area of the state that is designated for purposes of planning, development, delivery, and overall administration of services under the Older Americans Act.

(4) "Services to the aged" means those services the department administers pursuant to the Older Americans Act.

(5) "State plan" means a plan developed by the department to coordinate and administer delivery of services under the Older Americans Act.

History: En. Sec. 1, Ch. 645, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; Sec. 53-5-601, MCA 1989; redes. 52-3-401 by Code Commissioner, 1991.

52-3-402. Purpose. The purpose of this part is to grant the department authority to develop and administer the state plan on aging, to coordinate services to the aged pursuant to the Older Americans Act, and to establish or redesignate planning and service areas pursuant to section 305 of that act. It is the intent of the legislature that the number of planning and service areas be limited so that unnecessary administrative costs are eliminated.

History: En. Sec. 2, Ch. 645, L. 1983; Sec. 53-5-602, MCA 1989; redes. 52-3-402 by Code Commissioner, 1991.

52-3-403. Existing planning and service areas grandfathered — exception. The 11 planning and service areas existing on April 27, 1983, are grandfathered in for a period of not less than 4 years. However, the department may accept and consider requests from such existing planning and service areas that the requesting area be divided into two new areas and may grant one request and divide the area into two new areas. If the department grants a request and divides the requesting area into two new areas, this section's grandfather clause applies to the two new areas.

History: En. Sec. 3, Ch. 645, L. 1983; Sec. 53-5-603, MCA 1989; redes. 52-3-403 by Code Commissioner, 1991.

52-3-404. State plan on aging. The department may administer and develop the state plan on aging.

History: En. Sec. 4, Ch. 645, L. 1983; Sec. 53-5-604, MCA 1989; redes. 52-3-404 by Code Commissioner, 1991.

52-3-405. Designation of planning and service areas. (1) On or before October 1, 1983, and every 4 years following, the department shall redesignate the planning and service areas it utilizes for services to the aged.

(2) The department shall fix the number of planning and service areas at no less than 7 and no more than 12.

(3) Planning and service areas shall follow either recognized county boundaries or Indian reservation boundaries, or both.

(4) The department may designate a combination of Indian reservations as a planning and service area for any reservations that have applied to be designated under a consortium supported by their respective tribal governments.

History: En. Sec. 5, Ch. 645, L. 1983; Sec. 53-5-605, MCA 1989; redes. 52-3-405 by Code Commissioner, 1991.

52-3-406. Departmental rules. The department shall adopt rules to administer and implement this part.

History: En. Sec. 6, Ch. 645, L. 1983; Sec. 53-5-606, MCA 1989; redes. 52-3-406 by Code Commissioner, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 5

Montana Older Americans Act

Part Cross-References

Montana Access to Food and Nutrition Act, Title 50, ch. 49, part 1.

52-3-501. Short title. This part may be cited as the "Montana Older Americans Act".

History: En. Sec. 1, Ch. 67, L. 1987; Sec. 53-5-701, MCA 1989; redes. 52-3-501 by Code Commissioner, 1991.

52-3-502. Definitions. In this part, the following definitions apply:

(1) "Department" means the department of family services.

(2) "Older Montanan" means a resident of this state who is at least 60 years of age.

History: En. Sec. 2, Ch. 67, L. 1987; amd. Sec. 64, Ch. 83, L. 1989; Sec. 53-5-702, MCA 1989; redes. 52-3-502 by Code Commissioner, 1991.

52-3-503. Purpose and policy. (1) The legislature finds that older Montanans constitute a valuable resource of this state and that their competence, experience, and wisdom must be used more effectively for the benefit of all Montanans.

(2) The legislature further finds that a complete range of services is not available in all areas of the state and that many Montanans lack access to the services that are available.

(3) The legislature declares that it is the policy of this state, subject to available funding, to provide a wide range of coordinated services to enable older Montanans to maintain an independent lifestyle, avoid unnecessary institutional care, and live in dignity.

(4) It is the intent of the legislature that available federal, state, regional, and local resources be used to strengthen the economic, social, and general well-being of older Montanans and that the state:

(a) develop appropriate programs for older Montanans;

(b) coordinate and integrate all levels of service, with emphasis on the whole person; and

(c) promote alternative forms of service that will create options for older Montanans.

History: En. Sec. 3, Ch. 67, L. 1987; Sec. 53-5-703, MCA 1989; redes. 52-3-503 by Code Commissioner, 1991.

52-3-504. Services to be provided. Subject to available funding, the department, in conjunction with other state, local, and private agencies and organizations, shall identify and may provide for older Montanans, in addition to existing services:

(1) a directory of available services;

(2) transportation that provides access to services;

(3) housing, nutrition, education, homemaker, escort, respite, hospice, and other programs that facilitate self-care;

(4) physical and mental health care, including inpatient and outpatient services, screening, appliances and supplies, and home health care;

(5) placement in adult day care, foster care, personal care, supervisory care, and nursing homes;

(6) protective advocacy and legal programs;

(7) job training, job development, and income maintenance;

(8) adult education; and

(9) training and research in aging.

History: En. Sec. 4, Ch. 67, L. 1987; Sec. 53-5-704, MCA 1989; redes. 52-3-504 by Code Commissioner, 1991.

52-3-505. Role of department. The department shall develop a plan to coordinate the services identified in 52-3-504, facilitate cooperation among agencies, avoid duplication, and increase efficiency.

History: En. Sec. 5, Ch. 67, L. 1987; Sec. 53-5-705, MCA 1989; redes. 52-3-505 by Code Commissioner, 1991.

52-3-506. Coordination with federal legislation. Nothing in this part shall be construed to prevent the department from complying with the rules and regulations promulgated by the U.S. department of health and human services pursuant to the "Older Americans Act of 1965", as amended.

History: En. Sec. 6, Ch. 67, L. 1987; Sec. 53-5-706, MCA 1989; redes. 52-3-506 by Code Commissioner, 1991.

Part 6

Ombudsman Services

52-3-601. Purpose. The legislature finds that many disabled and elderly Montana citizens reside in long-term care facilities in Montana and because of their isolated and vulnerable condition are dependent on others for care and protection. It is the intent of the legislature that, contingent on receipt of federal funds for the purpose, the office of legal and long-term care ombudsman services:

(1) monitor the quality of care and life for residents of long-term care facilities;

(2) develop and coordinate legal services for elderly citizens; and

(3) through necessary investigations, reports, and corrective action, ensure that a good quality of care and life be maintained for residents of long-term care facilities.

History: En. Sec. 1, Ch. 223, L. 1987; Sec. 53-5-801, MCA 1989; redes. 52-3-601 by Code Commissioner, 1991.

52-3-602. Definitions. In this part, the following definitions apply:

(1) "Local ombudsman" means a person officially designated by the long-term care ombudsman to act as his local representative.

(2) "Long-term care facility" means a facility or part thereof that provides skilled nursing care, intermediate nursing care, or personal care, as these terms are defined in 50-5-101.

(3) "Long-term care ombudsman" means the individual appointed under 42 U.S.C. 3027(a)(12) to fulfill the federal requirement that the state provide an advocate for residents of long-term care facilities.

History: En. Sec. 2, Ch. 223, L. 1987; Sec. 53-5-802, MCA 1989; redes. 52-3-602 by Code Commissioner, 1991.

52-3-603. Office of legal and long-term care ombudsman services. Contingent on receipt of federal funds for the purpose, there is an office of legal and long-term care ombudsman services in the department of family services. As required by the Older Americans Act of 1965, as amended (42 U.S.C. 3001, et seq.), and the regulations adopted pursuant thereto, the office:

(1) serves as an advocate for Montana citizens residing in long-term care facilities, regardless of their age or source of payment for care, to ensure that their rights are protected, that they receive quality care, and that they reside in a safe environment; and

(2) coordinates legal services for the elderly.

History: En. Sec. 3, Ch. 223, L. 1987; amd. Sec. 65, Ch. 83, L. 1989; Sec. 53-5-803, MCA 1989; redes. 52-3-603 by Code Commissioner, 1991.

52-3-604. Access to long-term care facilities. (1) The long-term care ombudsman or local ombudsman shall have access without advance notice to any long-term care facility, including private access to any resident, for the purpose of meeting with residents, investigating and resolving complaints, and advising residents on their rights.

(2) Access must be granted to the long-term care ombudsman or local ombudsman during normal visiting hours (9 a.m. to 6 p.m.) and to the long-term care ombudsman at any time he considers necessary to perform the duties described in 52-3-603.

(3) The ombudsman shall carry out the duties described in 52-3-603 in a manner that is least disruptive to resident care and activities.

History: En. Sec. 4, Ch. 223, L. 1987; Sec. 53-5-804, MCA 1989; redes. 52-3-604 by Code Commissioner, 1991.

52-3-605. Enforcement of access. (1) A person who violates the provisions of 52-3-604 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The department of health and environmental sciences or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may petition the district court to impose, assess, and recover the civil penalty. Money collected as a civil penalty must be deposited in the state general fund.

(2) The department of health and environmental sciences or, upon request of that department, the county attorney of the county in which the long-term care facility in question is located may bring an action to enjoin a violation of any provision of 52-3-604 in addition to or exclusive of the remedy in subsection (1).

History: En. Sec. 5, Ch. 223, L. 1987; Sec. 53-5-805, MCA 1989; redes. 52-3-605 by Code Commissioner, 1991.

Part 7 reserved

Part 8

Montana Elder Abuse Prevention Act

52-3-801. Short title. This part may be cited as the "Montana Elder and Developmentally Disabled Abuse Prevention Act".

History: En. Sec. 1, Ch. 623, L. 1983; amd. Sec. 1, Ch. 198, L. 1989; Sec. 53-5-501, MCA 1989; redes. 52-3-801 by Code Commissioner, 1991.

52-3-802. Legislative findings and purpose. The legislature finds that a need exists to provide for cooperation among law enforcement officials and agencies, courts, and state and county agencies providing human services in preventing the abuse, neglect, and exploitation of Montana's elderly and developmentally disabled persons through the identification and reporting of acts of such abuse, neglect, and exploitation.

History: En. Sec. 2, Ch. 623, L. 1983; amd. Sec. 2, Ch. 198, L. 1989; Sec. 53-5-502, MCA 1989; redes. 52-3-802 by Code Commissioner, 1991.

52-3-803. Definitions. As used in this part, the following definitions apply:

(1) "Abuse" means the infliction of physical or mental injury or the deprivation of food, shelter, clothing, or services necessary to maintain the physical or mental health of an older person or a developmentally disabled person without lawful authority. A declaration made pursuant to 50-9-103 constitutes lawful authority.

(2) "Developmentally disabled person" means a person 18 years of age or older who is developmentally disabled as defined in 53-20-102.

(3) "Exploitation" means the unreasonable use of an older person or a developmentally disabled person, his money, or his property to the advantage of another by means of duress, menace, fraud, or undue influence.

(4) "Incapacitated person" has the meaning given in 72-5-101.

(5) "Long-term care facility" means a facility defined in 50-5-101.

(6) "Mental injury" means an identifiable and substantial impairment of an older person's intellectual or psychological functioning or well-being.

(7) "Neglect" means the failure of a guardian, employee of a public or private residential institution, facility, home, or agency, or any other person legally responsible in a residential setting for an older person's or a developmentally disabled person's welfare to provide food, shelter, clothing, or services necessary to maintain the physical or mental health of the older person or the developmentally disabled person.

(8) "Older person" means a person who is at least 60 years of age. For purposes of prosecution under 52-3-825(2), the person 60 years of age or older must be unable to protect himself from abuse, neglect, or exploitation because of a mental or physical impairment or because of frailties or dependencies brought about by advanced age.

(9) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily organ or function.

History: En. Sec. 3, Ch. 623, L. 1983; amd. Sec. 1, Ch. 668, L. 1985; amd. Sec. 111, Ch. 370, L. 1987; amd. Sec. 2, Ch. 450, L. 1987; amd. Sec. 3, Ch. 198, L. 1989; Sec. 53-5-503, MCA 1989; redes. 52-3-803 by Code Commissioner, 1991; amd. Sec. 1, Ch. 716, L. 1991.

Compiler's Comments

1991 Amendment: Inserted definition of incapacitated person.

52-3-804. Duties of department of family services. (1) The department shall investigate reports of abuse, neglect, or exploitation received pursuant to 52-3-811(1)(a).

(2) The department of family services shall prepare an annual report of the information obtained pursuant to the reporting requirement of this part.

(3) The department shall, when appropriate, provide protective services under Title 52, chapter 3, part 2, or under Title 52, chapter 4, part 1, for a person alleged to have been abused, neglected, or exploited.

(4) If a person alleged to be abused, neglected, or exploited pursuant to this part or his caretaker refuses to allow a representative of the department entrance to the premises for the purpose of investigating a report made pursuant to 52-3-811(1)(a), the district court in the county where the person is found may order a law enforcement officer or a department social worker to enter the premises to conduct an investigation upon finding there is probable cause to believe the person is abused, neglected, or exploited.

(5) If a representative of the department has reasonable grounds to believe that an older or developmentally disabled person alleged to be abused or neglected is suffering from abuse or neglect that presents a substantial risk of death or serious physical injury, the department may:

(a) provide voluntary protective services as provided in subsection (3); or

(b) if the department representative has reasonable grounds to believe that the person is incapacitated, provide emergency protective services as follows:

(i) arrange or facilitate an appropriate emergency protective service placement;

(ii) transport or arrange for the transport of the person to the appropriate placement;

(iii) not later than 2 judicial days following placement of the person, either:

(A) provide voluntary protective services as provided under subsection (3); or

(B) petition the district court to act as temporary guardian or appoint a temporary guardian as provided in 72-5-317.

History: En. Sec. 9, Ch. 623, L. 1983; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 4, Ch. 198, L. 1989; Sec. 53-5-504, MCA 1989; redes. 52-3-804 by Code Commissioner, 1991; amd. Sec. 2, Ch. 716, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (5) concerning actions Department may take.

52-3-805. Adult protective service teams. The county attorney or the department of family services may convene one or more temporary or permanent interdisciplinary adult protective service teams. These teams may assist in assessing the needs of, formulating and monitoring a treatment plan for, and coordinating services to older persons who are victims of abuse, neglect, or exploitation. The supervisor of adult protective services of the department of family services or his designee shall serve as the team's coordinator. Members must include a social worker, a member of a local law enforcement agency, a representative of the medical profession, and a county attorney or his designee, who is an attorney.

History: En. Sec. 1, Ch. 662, L. 1985; amd. Sec. 12, Ch. 609, L. 1987; Sec. 53-5-505, MCA 1989; redes. 52-3-805 by Code Commissioner, 1991.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Local government law enforcement, Title 7, ch. 32.

Licensing of medical doctors, Title 37, ch. 3.

Licensing of social workers, Title 37, ch. 22.

County departments of public welfare, Title 53, ch. 2, part 3.

52-3-806 through 52-3-810 reserved.

52-3-811. Reports. (1) When the professionals and other persons listed in subsection (3) know or have reasonable cause to suspect that an older person or a developmentally disabled person known to them in their professional or official capacities has been subjected to abuse, exploitation, or neglect, they shall:

(a) if the person is not a resident of a long-term care facility, report the matter to:

(i) the department of family services or its local affiliate;

(ii) the county attorney of the county in which the person resides or in which the acts that are the subject of the report occurred;

(b) if the person is a resident of a long-term care facility, report the matter to the long-term care ombudsman appointed under the provisions of 42 U.S.C. 3027(a)(12) and to the department of health and environmental sciences. The department shall investigate the matter pursuant to its authority in 50-5-204 and, if it finds any allegations of abuse, exploitation, or neglect contained in the report to be substantially true, forward a copy of the report to the department of family services and to the county attorney as provided in subsection (1)(a)(ii).

(2) If the report required in subsection (1) involves an act or omission of the department of family services which may be construed as abuse, exploitation, or neglect, a copy of the report may not be sent to the department but must be sent instead to the county attorney of the county in which the older person or the developmentally disabled person resides or in which the acts that are the subject of the report occurred.

(3) Professionals and other persons required to report are:

(a) a physician, resident, intern, professional or practical nurse, physician's assistant, or member of a hospital staff engaged in the admission, examination, care, or treatment of persons;

(b) an osteopath, dentist, denturist, chiropractor, optometrist, podiatrist, medical examiner, coroner, or any other health or mental health professional;

(c) an ambulance attendant;

(d) a social worker or other employee of the state, a county, or a municipality assisting an older person or a developmentally disabled person in the application for or receipt of public assistance payments or services;

(e) a person who maintains or is employed by a roominghouse, retirement home, nursing home, group home, or adult foster care home;

(f) an attorney, unless he acquired knowledge of the facts required to be reported from a client and the attorney-client privilege applies; and

(g) a peace officer or other law enforcement official.

(4) Any other person may submit a report as provided in subsection (1).

History: En. Sec. 4, Ch. 623, L. 1983; amd. Sec. 13, Ch. 548, L. 1985; amd. Sec. 11, Ch. 609, L. 1987; amd. Sec. 5, Ch. 198, L. 1989; Sec. 53-5-511, MCA 1989; redes. 52-3-811 by Code Commissioner, 1991.

Cross-References

Office of County Attorney, Title 7, ch. 4, part 27.

Local government law enforcement, Title 7, ch. 32.

Licensing of medical doctors, Title 37, ch. 3.

Licensing of social workers, Title 37, ch. 22.

Long-term care facilities — licensing, Title 50, ch. 5, part 2.

County departments of public welfare, Title 53, ch. 2, part 3.

52-3-812. Content of report. (1) The report required by 52-3-811 may be made in writing or orally, by telephone or in person. A person who receives an oral report must prepare it in writing as soon as possible.

(2) The report referred to under this section shall contain:

(a) the names and addresses of the older person or the developmentally disabled person and the person, if any, responsible for his care;

(b) the name and address, if available, of the person who is alleged to have abused, neglected, or exploited the older person or the developmentally disabled person;

(c) to the extent known, the person's age and the nature and extent of the abuse, neglect, or exploitation, including any evidence of previous injuries sustained by the older person or the developmentally disabled person; and

(d) the name and address of the person making the report.

History: En. Sec. 5, Ch. 623, L. 1983; amd. Sec. 6, Ch. 198, L. 1989; Sec. 53-5-512, MCA 1989; redes. 52-3-812 by Code Commissioner, 1991.

52-3-813. Confidentiality. (1) The case records of the departments of social and rehabilitation services and family services, their local affiliate, the county attorney, and the court, concerning actions taken under this part, and all reports made pursuant to 52-3-811 shall be kept confidential except as provided by this section.

(2) The records and reports required to be kept confidential by subsection (1) may be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a physician who has in his care an older person or a developmentally disabled person who he reasonably believes was abused, neglected, or exploited;

(b) a legal guardian or conservator of the older person or the developmentally disabled person if the identity of the person who made the report is protected and the legal guardian or conservator is not the person suspected of the abuse, neglect, or exploitation;

(c) the person named in the report as allegedly being abused, neglected, or exploited if that person is not legally incompetent;

(d) any person engaged in bona fide research if the person alleged in the report to have committed the abuse, exploitation, or neglect is later convicted of an offense constituting abuse, exploitation, or neglect and if the identity of the older person or the developmentally disabled person who is the subject of the report is not disclosed to the researcher; and

(e) an adult protective service team. Members of the team are required to keep information about the subject individuals confidential.

(3) The records and reports required to be kept confidential by subsection (1) shall be disclosed, upon request, to the following persons or entities in this or any other state:

(a) a county attorney or other law enforcement official who requires the information in connection with an investigation of a violation of this part;

(b) a court which has determined, in camera, that public disclosure of the report, data, information, or record is necessary for the determination of an issue before it;

(c) a grand jury upon its determination that the report, data, information, or record is necessary in the conduct of its official business.

(4) If the person who is reported to have abused, neglected, or exploited an older person or a developmentally disabled person is the holder of a license, permit, or certificate issued by the department of commerce under the provisions of Title 37 or issued by any other entity of state government, the report may be submitted to the entity that issued the license, permit, or certificate.

History: En. Sec. 6, Ch. 623, L. 1983; amd. Sec. 2, Ch. 662, L. 1985; amd. Sec. 63, Ch. 83, L. 1989; amd. Sec. 7, Ch. 198, L. 1989; Sec. 53-5-513, MCA 1989; redes. 52-3-813 by Code Commissioner, 1991.

Cross-References

Guardianship and conservatorship, Title 72, ch. 5.

52-3-814. Immunity from civil and criminal liability. Any person who makes a report required or authorized to be made under 52-3-811 is immune from civil or criminal liability which might otherwise be incurred or imposed as a result of such a report unless the report is false in any material respect and the person acted in bad faith or with malicious purpose.

History: En. Sec. 7, Ch. 623, L. 1983; Sec. 53-5-514, MCA 1989; redes. 52-3-814 by Code Commissioner, 1991.

Cross-References

Unsworn falsification to authorities, 45-7-203.

52-3-815. Evidence of abuse or neglect to be gathered and submitted. (1) A person or agency receiving a report of suspected abuse or neglect under 52-3-811 shall prepare a written description of the conditions regarded as evidence of abuse or neglect and may, with the consent of an allegedly abused or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, take or cause to be taken photographs of an area of trauma visible on the body of the allegedly abused or neglected person and regarded as evidence of abuse or neglect.

(2) A physician required to report under 52-3-811 may, with the consent of an allegedly abused or neglected older person or developmentally disabled person or without consent of the person if it appears that the person is an incapacitated person, require x-rays or other appropriate medical tests or procedures that would, in the professional opinion of the physician, assist in establishing evidence related to the allegation of abuse or neglect.

(3) Evidence authorized to be gathered under this section must be submitted with the report required under 52-3-811 to the authorities designated in 52-3-811 as soon as possible after submission of the report.

History: En. Sec. 3, Ch. 716, L. 1991.

Compiler's Comments

Codification Not Followed: Section 4, Ch. 717, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 5, part 5. The Code Commissioner has codified this section as part of Title 52, ch. 3, part 8, to reflect the renumbering of former Title 53, ch. 5, part 5, as Title 52, ch. 3, part 8.

52-3-816 through 52-3-820 reserved.

52-3-821. Admissibility of evidence. In any proceeding resulting from a report made pursuant to the provisions of this part or in any proceeding where the report or its content is sought to be introduced into evidence, the report or its content or any other fact related to the report or to the condition of the person who is the subject of the report may not be excluded on the ground that the matter is or may be the subject of a privilege granted in Title 26, chapter 1, part 8, except the attorney-client privilege granted by 26-1-803.

History: En. Sec. 8, Ch. 623, L. 1983; amd. Sec. 8, Ch. 198, L. 1989; Sec. 53-5-521, MCA 1989; redes. 52-3-821 by Code Commissioner, 1991.

52-3-822 through 52-3-824 reserved.

52-3-825. Penalties. (1) Any person who purposely or knowingly fails to make a report required by 52-3-811 or discloses or fails to disclose the contents of a case record or report in violation of 52-3-813 is guilty of an offense and upon conviction is punishable as provided in 46-18-212.

(2) Any individual who purposely or knowingly abuses, neglects, or exploits an older person or a developmentally disabled person is guilty of an offense and upon a first conviction may be fined an amount not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both, and upon a second or succeeding conviction may be imprisoned for a term not to exceed 10 years and may be fined an amount not to exceed $10,000, or both.

History: En. Sec. 10, Ch. 623, L. 1983; amd. Sec. 2, Ch. 668, L. 1985; amd. Sec. 1, Ch. 411, L. 1987; amd. Sec. 9, Ch. 198, L. 1989; Sec. 53-5-525, MCA 1989; redes. 52-3-825 by Code Commissioner, 1991.

Cross-References

When no penalty is specified — misdemeanor, 46-18-212.

CHAPTER 4

SERVICES TO THE DISABLED

Part 1 — Developmentally Disabled—Protective Services

52-4-101. Definitions.
52-4-102. Legislative findings and directives.
52-4-103. Application for protective services.
52-4-104. Protective and supportive services provided.
52-4-105. Department as conservator of small estate of person adjudicated developmentally disabled.
52-4-106. Bond not required — exception.
52-4-107. Costs of protective services.
52-4-108. Reports required.
52-4-109 reserved.
52-4-110. Acceptance and expenditure of donated funds.

Part 2 — Physically Disabled—Community Home Licensing

52-4-201. Purpose.
52-4-202. Definitions.
52-4-203. Licensing.
52-4-204. Health and safety standards.
52-4-205. Rulemaking.

Part 1

Developmentally Disabled — Protective Services

Part Cross-References

Persons under disability guardianship and conservatorship, Title 72, ch. 5.

52-4-101. Definitions. As used in this part, unless the context otherwise requires, the following definitions apply:

(1) "Client" means a person for whom voluntary protective services are rendered pursuant to provisions of this part.

(2) "Department" means the department of family services provided for in 2-15-2401.

(3) "Developmentally disabled person" means a person who by reason of a developmental disability is not able, unassisted, to properly manage or care for his person or his property.

(4) "Protective services" means case management of services directed at preventing or remedying neglect, abuse, or exploitation of developmentally disabled persons.

(5) "Ward" means a person for whom the department has been appointed guardian under Title 72, chapter 5, part 3.

History: En. Sec. 1, Ch. 508, L. 1973; R.C.M. 1947, 71-1901; amd. Sec. 97, Ch. 609, L. 1987; Sec. 53-20-401, MCA 1989; redes. 52-4-101 by Code Commissioner, 1991.

52-4-102. Legislative findings and directives. (1) In recognition of the need to provide supervision and protection from abuse, neglect, and exploitation for the developmentally disabled and in acknowledgment of the desirability of providing such services outside the state institutions, the legislature hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this part for developmentally disabled persons.

(2) The director of the department shall adopt rules for the administration of this part. The department shall develop a statewide system of protective services in accordance with regulations and standards established by the department with respect to this program. The department may:

(a) provide direct services;

(b) enter into a contract with any responsible agency, public or private, for provision of protective services by the agency;

(c) accept appointment by any district court as guardian or conservator of a mentally retarded or other developmentally disabled person. However, this subsection does not relieve the department of the duty to comply with the requirements of Title 72, chapter 5, for the appointment of a guardian or conservator or the requirements of 52-4-105.

History: En. Sec. 2, Ch. 508, L. 1973; R.C.M. 1947, 71-1902; amd. Sec. 1, Ch. 343, L. 1981; amd. Sec. 98, Ch. 609, L. 1987; Sec. 53-20-402, MCA 1989; redes. 52-4-102 by Code Commissioner, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-4-103. Application for protective services. (1) Protective services may be provided on a voluntary basis for any developmentally disabled person who requests them for himself or at the request of any interested person, when the department determines that such person is a developmentally disabled person who would benefit from services provided in this part and that the department is currently able to supply services to such person. A parent may name the department as guardian of the developmentally disabled person in his will. A parent may also name the department as guardian or trustee of the developmentally disabled person to assume such duties during the parents' lifetime. Voluntary services may be discontinued upon the written request of the ward or any personal representative of the ward. Any appointment of the department as guardian by the parent of a developmentally disabled person, either by will or by appointment during the parent's lifetime, must comply with and is governed by the requirements of Title 72, chapter 5, part 3.

(2) Application for protective services under this part shall be made to the designated field staff of the department or other designated state agency in the county in which the applicant resides, and the application shall be transmitted promptly to the department. Such application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department and shall contain the name, age, and residence of the applicant and such other information as may be required by the rules of the department. The rules of the department shall simplify the application process in order that protective services may be furnished as soon as possible. Adequate safeguards shall be established by the department to insure that only eligible persons receive protective services under this part. The department shall notify the applicant and the designated field staff of the department or other designated state agency in writing of its decision concerning eligibility for protective services.

History: En. Sec. 3, Ch. 508, L. 1973; amd. Sec. 39, Ch. 37, L. 1977; R.C.M. 1947, 71-1903; amd. Sec. 2, Ch. 343, L. 1981; Sec. 53-20-403, MCA 1989; redes. 52-4-103 by Code Commissioner, 1991.

52-4-104. Protective and supportive services provided. (1) The department shall assist each of its clients or wards to obtain those protective and supportive services which may be necessary to help the client or ward function to the extent of his capabilities as an independent, self-sufficient member of society. Services under this part may include but shall not be limited to assistance in obtaining:

(a) housing, clothing, and food;

(b) education and training for living in society and, where possible, for employment;

(c) employment;

(d) financial benefits to which the client or ward may be entitled;

(e) medical services and supplies;

(f) necessary legal services;

(g) marshaling, protection, and insurance of the client's or ward's property;

(h) financial advice and services; and

(i) participation in cultural and recreational activities.

(2) Services under this part may also include but shall not be limited to assistance in preventing exploitation of the client or ward by others and in preventing abuse or neglect of the client or ward and injury to others.

(3) The provision of protective services pursuant to this part does not create a guardianship relationship between the department and the develop-

mentally disabled person unless a guardianship is created in accordance with the requirements of Title 72, chapter 5, part 3.

(4) The department may not provide a developmentally disabled person protective services that impose a legal limitation or restriction on the person unless the department has been appointed the legal guardian of or conservator for the person under the provisions of Title 72, chapter 5.

History: En. Sec. 5, Ch. 508, L. 1973; R.C.M. 1947, 71-1905; amd. Sec. 4, Ch. 343, L. 1981; amd. Sec. 99, Ch. 609, L. 1987; Sec. 53-20-405, MCA 1989; redes. 52-4-104 by Code Commissioner, 1991.

52-4-105. Department as conservator of small estate of person adjudicated developmentally disabled. The department may be appointed as conservator of the estate of any person adjudicated developmentally disabled if the department is providing protective services for such person and if it shall appear to the court that the value of the assets of such person does not exceed $10,000 and that there is no other person or institution whose appointment in such capacity would be more appropriate. The department shall report annually to the court which appointed it on the discharge of its duties as conservator of an estate under this section and shall otherwise be subject to the requirements of Title 72, chapter 5, part 4. Any appointment of the department as conservator of the estate of a developmentally disabled person made pursuant to this section is governed by and must comply with the requirements of Title 72, chapter 5, part 4.

History: En. Sec. 6, Ch. 508, L. 1973; R.C.M. 1947, 71-1906; amd. Sec. 5, Ch. 343, L. 1981; Sec. 53-20-406, MCA 1989; redes. 52-4-105 by Code Commissioner, 1991.

52-4-106. Bond not required — exception. The department shall not be required to post bond in proceedings under this part unless serving as a court-appointed conservator as provided in 52-4-105, in which case it shall furnish such bond as required by law.

History: En. Sec. 8, Ch. 508, L. 1973; R.C.M. 1947, 71-1908; Sec. 53-20-408, MCA 1989; redes. 52-4-106 by Code Commissioner, 1991.

Cross-References

Bond — power of court to require — amount, 72-5-411.

52-4-107. Costs of protective services. (1) If the income from the assets available to a ward suffice, the department may require such ward, the custodian, guardian, or conservator of such ward or, if the governing instrument permits, the trustee of such ward to pay all reasonable and proper costs of proceedings in the interest of such ward under this part or Title 72, chapter 5, including, without limitation, court costs, sheriff fees, attorney fees, and costs of diagnostic services, and to pay for protective services rendered to the ward or to reimburse the department for funds expended for such costs or services.

(2) Upon a written petition filed by the department, the court by which the department was appointed may permit annual expenditure of up to 3% of the principal assets if such expenditure be shown to be of special advantage for the ward. The department shall file an accounting each year, and the court by which the department was appointed shall conduct a hearing to determine

the propriety of any charge or charges to a ward. Upon such hearing, the court shall enter its order approving, disapproving, or modifying such charge or charges. The order of the court may be prospective as to charges of a recurring nature which reasonably may be anticipated.

(3) Except as provided in subsections (1) and (2) of this section, the net cost of proceedings under this part and of services provided by the department shall be paid from moneys appropriated for that purpose by the legislature or from moneys available from any other governmental or private source. Claims for state reimbursements shall be presented to the department at such times and in such manner as the department may prescribe. The department shall certify the amount to the department of administration. The amount so certified shall be paid from the state treasury upon the voucher of the department and the warrant of the department of administration.

History: En. Sec. 9, Ch. 508, L. 1973; R.C.M. 1947, 71-1909; amd. Sec. 100, Ch. 609, L. 1987; Sec. 53-20-409, MCA 1989; redes. 52-4-107 by Code Commissioner, 1991.

Cross-References

Per diem payments for institutional care, Title 53, ch. 1, part 4.

52-4-108. Reports required. With respect to each client or ward, designated field staff shall file a written report with the director of the department no later than June 30, 1974, and annually thereafter setting forth the services which have been provided for the client or ward, including specifically an accounting for any transactions with property of the client or ward other than as a court-appointed conservator, the current condition of the client or ward, and the recommendations of the department as to whether its services should continue or be terminated and whether other proceedings should be instituted.

History: En. Sec. 10, Ch. 508, L. 1973; R.C.M. 1947, 71-1910(1); amd. Sec. 101, Ch. 609, L. 1987; Sec. 53-20-410, MCA 1989; redes. 52-4-108 by Code Commissioner, 1991.

52-4-109 reserved.

52-4-110. Acceptance and expenditure of donated funds. The department may, on behalf of the state of Montana, accept and expend grants, gifts, and legacies of money and other property, including federal grants in furtherance of the purposes of this part subject to any reasonable and proper conditions any donor may attach which are acceptable to the director of the department and which do not violate the constitution, laws, or public policy of the state of Montana.

History: En. Sec. 13, Ch. 508, L. 1973; R.C.M. 1947, 71-1913; Sec. 53-20-413, MCA 1989; redes. 52-4-110 by Code Commissioner, 1991.

Part 2

Physically Disabled — Community Home Licensing

52-4-201. Purpose. The legislature, in recognition of the needs of persons with severe disabilities and of the desirability of meeting those needs on a community level, establishes in 52-4-201 through 52-4-205 authority for the state to license community homes for persons with severe disabilities. Licensed community homes for persons with severe disabilities are for the purpose of providing residential settings for persons with severe disabilities receiving services funded through state-administered programs who otherwise are unable to live independently and who are determined to be capable of residing in noninstitutional settings.

History: En. Sec. 8, Ch. 330, L. 1989; Sec. 53-19-201, MCA 1989; redes. 52-4-201 by Code Commissioner, 1991.

52-4-202. Definitions. As used in 52-4-201 through 52-4-205, the following definitions apply:

(1) "Community home for persons with severe disabilities" means a family-oriented residence that is designed to provide residential services for two to eight persons with severe disabilities and that does not provide skilled or intermediate nursing care. This definition does not preclude the provision of skilled or intermediate nursing care by third-person providers.

(2) "Department" means the department of family services established in 2-15-2401.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(4) "Severe disability" means a permanent disability that substantially limits major life activity, such as walking, self-care, seeing, hearing, speaking, learning, reasoning, judgment, or memory, and that can be diagnosed by a physician. The term includes the condition of a person with severe disabilities as defined in 53-19-102.

History: En. Sec. 9, Ch. 330, L. 1989; Sec. 53-19-202, MCA 1989; redes. 52-4-202 by Code Commissioner, 1991.

52-4-203. Licensing. (1) A community home for persons with severe disabilities must be licensed annually by the department.

(2) The department may also issue temporary and provisional licenses.

History: En. Sec. 10, Ch. 330, L. 1989; Sec. 53-19-203, MCA 1989; redes. 52-4-203 by Code Commissioner, 1991.

52-4-204. Health and safety standards. (1) A community home for persons with severe disabilities must be certified annually for fire and life safety by the department of justice. The department of justice shall notify the department whenever a community home has been certified or refused certification.

(2) (a) Local health officers shall inspect a community home for persons with severe disabilities to ensure compliance with health and safety stand-

ards. If for any reason the local authority cannot complete the inspection in a timely manner, the department of health and environmental sciences may make the inspection to ensure compliance with the standards.

(b) The inspecting health officer shall notify the department whether a community home is or is not in compliance with applicable standards.

(c) A reasonable fee may be charged by health authorities conducting compliance inspections.

History: En. Sec. 11, Ch. 330, L. 1989; Sec. 53-19-204, MCA 1989; redes. 52-4-204 by Code Commissioner, 1991; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

52-4-205. Rulemaking. (1) The department shall, for the purpose of licensing, adopt rules to govern administration, operation, and health and safety requirements for community homes for persons with severe disabilities in order to protect rights of residents. The department shall provide for temporary and provisional licensing.

(2) The department of health and environmental sciences and the state fire prevention and investigation program of the department of justice shall provide advice and recommendations to the department concerning licensing requirements for health and safety.

History: En. Sec. 12, Ch. 330, L. 1989; Sec. 53-19-205, MCA 1989; redes. 52-4-205 by Code Commissioner, 1991; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 5

CORRECTIONS

Part 1 — Youthful Offenders

52-5-101. Establishment of state youth correctional facilities — prohibitions.
52-5-102. Control and management of youth correctional facilities.
52-5-103. Cooperative agreements for services with governing body of Indian tribe.
52-5-104. Youth forest camps and work programs.
52-5-105. Superintendents to manage facilities.
52-5-106. Curricula at facilities.
52-5-107. Maximum age of commitment.
52-5-108. Medical examination before admission — records required to accompany child committed.
52-5-109. Commitment expenses — arrangement for transportation.
52-5-110. Transfer of child to other facility or institution — notice.
52-5-111. Commutation of sentence to state prison and transfer of prisoner to youth correctional facility or Swan River forest camp.
52-5-112. University aid to residents of schools.
52-5-113. Apprehension and return of youth leaving youth correctional facility without permission.
52-5-114. Penalty for aiding resident in leaving or not returning to a youth correctional facility.
52-5-115 through 52-5-119 reserved.
52-5-120. Youth industries programs.
52-5-121. Rulemaking authority.
52-5-122 through 52-5-124 reserved.
52-5-125. Department of family services to establish additional youth evaluation programs.
52-5-126. Youth aftercare agreement.
52-5-127. Control over youth released under aftercare agreement.
52-5-128. Detention of youth who violates aftercare agreement.
52-5-129. Hearing on alleged violation of aftercare agreement — right to appeal outcome.

Part 1

Youthful Offenders

52-5-101. Establishment of state youth correctional facilities — prohibitions. (1) The department of family services, within the annual or biennial budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate youth in need of these services. The youth must be 10 years of age or older and under 19 years of age. The facilities include but are not limited to the state youth correctional facilities at the Mountain View school in Helena and the Pine Hills school in Miles City.

(2) A youth alleged or found to be a youth in need of supervision may not be placed in a state youth correctional facility as defined in 41-5-103.

History: **En. Sec. 8, Ch. 320, L. 1967; amd. Sec. 44, Ch. 120, L. 1974; amd. Sec. 44, Ch. 37, L. 1977; R.C.M. 1947, 80-1410; amd. Sec. 1, Ch. 381, L. 1985; amd. Sec. 3, Ch. 737, L. 1985; amd. Sec. 2, Ch. 11, Sp. L. June 1986; amd. Sec. 102, Ch. 609, L. 1987; amd. Sec. 1, Ch. 212, L. 1989; Sec. 53-30-202, MCA 1989; redes. 52-5-101 by Code Commissioner, 1991; amd. Sec. 6, Ch. 548, L. 1991.**

Compiler's Comments

1991 Amendment: In (1), in two places, substituted "youth" for "children" and in last sentence, after "limited to", inserted "the state youth correctional facilities at", after "Mountain View school" inserted "in Helena", and after "Pine Hills school" inserted "in Miles City"; and inserted (2) prohibiting placement in a state youth correctional facility. Amendment effective April 23, 1991.

52-5-102. Control and management of youth correctional facilities. The facilities provided for in 52-5-101 shall exercise their functions under the supervision and general management of the department of family services. Except where otherwise provided by law, the department by rules shall establish standards of care and policies of admission, transfers, discharge, and aftercare supervision in order to provide adequate care for children and adequate service to the courts. Policies of admission may include criteria for medical examinations required under 52-5-108. The department shall develop special programs within each facility which are adaptable to the particular needs of its operation.

History: **En. Sec. 9, Ch. 320, L. 1967; amd. Sec. 45, Ch. 120, L. 1974; R.C.M. 1947, 80-1411; amd. Sec. 103, Ch. 609, L. 1987; Sec. 53-30-203, MCA 1989; redes. 52-5-102 by Code Commissioner, 1991; amd. Sec. 1, Ch. 253, L. 1991.**

Compiler's Comments

1991 Amendment: Inserted third sentence allowing inclusion of criteria for medical examination as part of admission policy; and made minor change in style. Amendment effective March 29, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Disposition of contraband in correctional institution, 53-1-105.

52-5-103. Cooperative agreements for services with governing body of Indian tribe. (1) The department of family services may enter into agreements with the governing body of an Indian tribe within the state for residential, educational, evaluation, and aftercare services maintained by the department for children who have been adjudicated delinquent by the tribal court, subject to the provisions of this part and parts 1 and 2 of Title 53, chapter 1.

(2) Any agreement entered into under subsection (1) must also satisfy the requirements of Title 18, chapter 11.

History: **En. Sec. 1, Ch. 118, L. 1975; R.C.M. 1947, 80-1419; amd. Sec. 12, Ch. 309, L. 1981; amd. Sec. 177, Ch. 575, L. 1981; amd. Sec. 104, Ch. 609, L. 1987; Sec. 53-30-204, MCA 1989; redes. 52-5-103 by Code Commissioner, 1991.**

52-5-104. Youth forest camps and work programs. In the case of a youth forest camp, a work program shall be provided by the department of state lands and shall be carried out with cooperation between that department and the camp superintendent.

History: **En. Sec. 10, Ch. 320, L. 1967; amd. Sec. 46, Ch. 120, L. 1974; R.C.M. 1947, 80-1412; amd. Sec. 11, Ch. 140, L. 1985; Sec. 53-30-205, MCA 1989; redes. 52-5-104 by Code Commissioner, 1991.**

52-5-105. Superintendents to manage facilities. Each facility provided for in 52-5-101 is under the immediate management and control of a superintendent. If the parent or legal guardian of a resident of a facility cannot be located, the superintendent or his designee may consent to necessary medical treatment for the resident of the facility under his management and control.

History: En. Sec. 46, Ch. 199, L. 1965; amd. Sec. 11, Ch. 320, L. 1967; R.C.M. 1947, 80-2202; amd. Sec. 1, Ch. 527, L. 1989; Sec. 53-30-206, MCA 1989; redes. 52-5-105 by Code Commissioner, 1991; amd. Sec. 1, Ch. 117, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence, after "provided for", substituted "in 52-5-101 is" for "herein shall be" and in second sentence, before "medical treatment", substituted "necessary" for "emergency". Amendment effective March 20, 1991.

52-5-106. Curricula at facilities. The academic and vocational curricula in facilities containing academic and vocational training shall include such academic and vocational subjects as are taught in the public schools of the state and shall conform to the standards set by the board of public education.

History: En. Sec. 47, Ch. 199, L. 1965; amd. Sec. 12, Ch. 320, L. 1967; R.C.M. 1947, 80-2203; Sec. 53-30-207, MCA 1989; redes. 52-5-106 by Code Commissioner, 1991.

Cross-References

School instruction and special programs, Title 20, ch. 7.

52-5-107. Maximum age of commitment. No child who has attained the age of 18 years shall be committed by any youth court to the department of family services, except, however, that any person under 19 years who prior to attaining the age of 18 years came under the jurisdiction of the youth court by reason of delinquent conduct and whose adjudication of delinquency is not made until after the child reaches the age of 18 years may be committed to the department of family services.

History: En. Sec. 48, Ch. 199, L. 1965; amd. Sec. 13, Ch. 320, L. 1967; amd. Sec. 15, Ch. 262, L. 1969; R.C.M. 1947, 80-2204; amd. Sec. 105, Ch. 609, L. 1987; amd. Sec. 2, Ch. 212, L. 1989; Sec. 53-30-208, MCA 1989; redes. 52-5-107 by Code Commissioner, 1991.

Cross-References

Youth Court — jurisdiction, 41-5-203.

Youth Court — retention of jurisdiction, 41-5-205.

52-5-108. Medical examination before admission — records required to accompany child committed. (1) Before a child is admitted for any purpose or for any length of time to the Mountain View school, the Pine Hills school, or other facility under an order of commitment to the department of family services, he must be examined by a licensed physician. A child committed to one of the schools or the department must be accompanied by the order of commitment, a medical examination report, an adequate social history, and any school records.

(2) The medical examination required under this section must be a current, complete physical examination of the child.

History: En. Sec. 49, Ch. 199, L. 1965; amd. Sec. 14, Ch. 320, L. 1967; R.C.M. 1947, 80-2205; amd. Sec. 13, Ch. 609, L. 1987; Sec. 53-30-209, MCA 1989; redes. 52-5-108 by Code Commissioner, 1991; amd. Sec. 2, Ch. 253, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning, substituted "admitted for any purpose or for any length of time" for "committed" and after "Pine Hills school, or" inserted "other facility under an order of commitment to"; inserted (2) requiring that the medical examination be a current and complete physical examination; and made minor changes in style. Amendment effective March 29, 1991.

52-5-109. Commitment expenses — arrangement for transportation. The expenses of committing a child to the Mountain View school, the Pine Hills school, or the department of family services and transporting such child to the Mountain View school, the Pine Hills school, or the place designated by the department for it to receive custody and the expense of returning such child to the county of residence shall be borne by the county of residence. The district judge shall arrange for transportation of the child to the place where the department has directed that it will receive custody of such child.

History: En. Sec. 50, Ch. 199, L. 1965; amd. Sec. 15, Ch. 320, L. 1967; R.C.M. 1947, 80-2206; amd. Sec. 13, Ch. 609, L. 1987; Sec. 53-30-210, MCA 1989; redes. 52-5-109 by Code Commissioner, 1991.

Cross-References

Residence — rules for determining, 1-1-215.

52-5-110. Transfer of child to other facility or institution — notice. The department of family services upon recommendation of the superintendent of a facility may transfer a child resident in one of its youth correctional facilities to any other facility or institution under the jurisdiction and control of the department.

History: En. Sec. 53, Ch. 199, L. 1965; amd. Sec. 16, Ch. 320, L. 1967; R.C.M. 1947, 80-2209; amd. Sec. 25, Ch. 361, L. 1983; amd. Sec. 14, Ch. 363, L. 1983; amd. Sec. 10, Ch. 151, L. 1985; amd. Sec. 13, Ch. 14, Sp. L. June 1986; amd. Sec. 106, Ch. 609, L. 1987; Sec. 53-30-211, MCA 1989; redes. 52-5-110 by Code Commissioner, 1991.

52-5-111. Commutation of sentence to state prison and transfer of prisoner to youth correctional facility or Swan River forest camp. (1) Upon the application of a person under 19 years of age who has been sentenced to the state prison or upon the application of his parents or guardian, the governor may, after consulting with the department of corrections and human services and the department of family services and with the approval of the board of pardons, commute the sentence by committing such person to the department of family services until he is 19 years of age or until sooner placed or discharged.

(2) If such person's behavior after being committed to the department of family services indicates that he is not a proper person to reside at one of the youth correctional facilities, the governor, after consulting with the department of corrections and human services and the department of family services and with the approval of the board of pardons, may revoke the commutation and return him to the state prison to serve out his unexpired term, and the time spent by him at one of the youth correctional facilities or while a refugee from one of the youth correctional facilities shall not be considered as a part of his original sentence.

(3) Upon recommendation of the warden and with the approval of the department of corrections and human services and the department of family

services, a person under 19 years of age who has been sentenced to the state prison may be transferred to any youth correctional facility under the jurisdiction and control of the department of family services.

(4) Upon recommendation of the warden and approval of a person sentenced to the state prison or application of a person sentenced to the state prison and approval of the warden and with the approval of the department of corrections and human services, such person sentenced to the state prison who is 25 years of age or younger may be transferred to the Swan River forest camp. Prior to departmental approval of the transfer, the person must undergo an evaluation by the department to determine his suitability for transfer to the camp. The results of the evaluation must include a finding that a minimum security facility is an appropriate placement for such person or the transfer shall be denied. If the person is transferred, he shall be under the supervision and control of the facility to which he is transferred.

(5) If such person's behavior after transfer to a youth correctional facility or the Swan River forest camp indicates he might be released on parole or his sentence be commuted and he be discharged from custody, the superintendent of such facility, with the approval of the department of corrections and human services and the department of family services in the case of a youth correctional facility or with the approval of the department of corrections and human services in the case of the Swan River forest camp, may make an appropriate recommendation to the board of pardons and the governor, who may in their discretion parole such person or commute his sentence.

(6) If such person's behavior after transfer to a youth correctional facility or the Swan River forest camp indicates he is not a proper person to reside in such facility, upon recommendation of the superintendent and with the approval of the department of corrections and human services and the department of family services in the case of a youth correctional facility or with the approval of the department of corrections and human services in the case of the Swan River forest camp, such person shall be returned to the state prison to serve out his unexpired term.

History: En. Sec. 54, Ch. 199, L. 1965; amd. Sec. 17, Ch. 320, L. 1967; amd. Sec. 1, Ch. 367, L. 1971; R.C.M. 1947, 80-2210; amd. Sec. 19, Ch. 38, L. 1979; amd. Sec. 3, Ch. 233, L. 1983; amd. Sec. 107, Ch. 609, L. 1987; amd. Sec. 3, Ch. 212, L. 1989; Sec. 53-30-212, MCA 1989; redes. 52-5-111 by Code Commissioner, 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

52-5-112. University aid to residents of schools. The department of family services may on the recommendation of the superintendent authorize a resident of the Mountain View school or Pine Hills school who has completed high school and who is otherwise eligible to receive up to $800 per year toward his expenses incurred in attending a unit of the Montana university system. The money may be used for transportation, clothing, books, board, and room and shall be paid in the same manner as other expenses of the school. The board of regents of higher education may waive fees and tuition for these residents pursuant to 20-25-421. No more than eight residents of each school may receive these benefits each year. The department shall notify the board of regents before August 1 of each year of the residents it has designated to receive the benefits for the forthcoming school year.

History: En. Sec. 57, Ch. 199, L. 1965; amd. Sec. 57, Ch. 120, L. 1974; R.C.M. 1947, 80-2213; amd. Sec. 13, Ch. 609, L. 1987; amd. Sec. 2, Ch. 170, L. 1989; Sec. 53-30-213, MCA 1989; redes. 52-5-112 by Code Commissioner, 1991.

Cross-References

University System, Title 20, ch. 25.

52-5-113. Apprehension and return of youth leaving youth correctional facility without permission. A youth who has left a youth correctional facility of the department of family services without permission may be apprehended and returned by any citizen. The term "youth correctional facility of the department" means any facility under the supervision and control of the department of family services which has as its primary function the care, training, custody, and control of youth and specifically includes the Pine Hills school for boys and the Mountain View school for girls.

History: En. Sec. 55, Ch. 199, L. 1965; amd. Sec. 18, Ch. 320, L. 1967; amd. Sec. 1, Ch. 313, L. 1973; R.C.M. 1947, 80-2211; amd. Sec. 20, Ch. 38, L. 1979; amd. Sec. 2, Ch. 381, L. 1985; amd. Sec. 108, Ch. 609, L. 1987; Sec. 53-30-214, MCA 1989; redes. 52-5-113 by Code Commissioner, 1991.

52-5-114. Penalty for aiding resident in leaving or not returning to a youth correctional facility. (1) A person is guilty of an offense if he purposely or knowingly:

(a) permits or assists a resident of a youth correctional facility to leave a facility without permission;

(b) permits or assists a resident's failure to return to a youth correctional facility from which he had permission to leave;

(c) furnishes or attempts to furnish to such a resident a tool, weapon, or other article with the intent of aiding him to leave without permission or to not return; or

(d) harbors or conceals a resident who has left without permission.

(2) Upon conviction of a violation of subsection (1), a person shall be punished by imprisonment for a term of not less than 6 months or more than 2 years or by a fine not exceeding $1,000 or by both such fine and imprisonment.

History: En. Sec. 56, Ch. 199, L. 1965; amd. Sec. 19, Ch. 320, L. 1967; R.C.M. 1947, 80-2212; amd. Sec. 109, Ch. 609, L. 1987; amd. Sec. 1, Ch. 519, L. 1989; Sec. 53-30-215, MCA 1989; redes. 52-5-114 by Code Commissioner, 1991.

Cross-References

"Felony" defined, 45-2-101.

52-5-115 through 52-5-119 reserved.

52-5-120. Youth industries programs. The department of family services may:

(1) establish industries programs in state youth correctional facilities that:

(a) assist in the training and rehabilitation of residents at state youth correctional facilities; and

(b) provide the production or manufacture of products and the rendering of services that may be needed by:

(i) a department or agency of the state of Montana or a unit of local government;

(ii) an agency of the federal government; or

(iii) an office or agency of another state or a political subdivision of another state;

(2) contract with private industry for the sale of goods produced or manufactured at state youth correctional facilities; and

(3) fix the purchase price for goods and services available under the industries program established in subsection (1).

History: En. Sec. 1, Ch. 434, L. 1991.

Compiler's Comments

Codification Not Followed: Section 3, Ch. 434, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 30, part 2. The Code Commissioner has codified this section as part of Title 52, ch. 5, part 1, to reflect the renumbering of former Title 53, ch. 30, part 2, as Title 52, ch. 5, part 1.

Effective Date: Section 4, Ch. 434, L. 1991, provided: "[This act] is effective July 1, 1991."

52-5-121. Rulemaking authority. The department of family services may adopt rules necessary for administration of industries programs authorized in 52-5-120. Rules adopted by the department may include rules regarding:

(1) requirements for participation of youth in industries programs;

(2) the type of training and experience to be provided to youth under these programs;

(3) the type of goods and services to be sold under the industries programs;

(4) contracts with private industry for the sale of goods produced or manufactured at state youth correctional facilities; and

(5) payment of wages to youth working in industries programs.

History: En. Sec. 2, Ch. 434, L. 1991.

Compiler's Comments

Codification Not Followed: Section 3, Ch. 434, L. 1991, provided that this section was intended to be codified as an integral part of Title 53, ch. 30, part 2. The Code Commissioner has codified this section as part of Title 52, ch. 5, part 1, to reflect the renumbering of former Title 53, ch. 30, part 2, as Title 52, ch. 5, part 1.

Effective Date: Section 4, Ch. 434, L. 1991, provided: "[This act] is effective July 1, 1991."

52-5-122 through 52-5-124 reserved.

52-5-125. *(Temporary)* **Department of family services to establish additional youth evaluation programs.** (1) Subject to the availability of funding, the department of family services shall provide for additional youth evaluation programs, in addition to the youth evaluation program in Great Falls, to conduct comprehensive evaluations of youths ordered by a youth court, to replace similar programs performed at state institutions. The programs must be located in geographically strategic locations in the state to best serve the youths and families in need of these services. Each program must be capable of serving 10 to 15 youths at any one time.

(2) In addition to providing services to youths requiring evaluations, each program established under subsection (1) may provide detention services for up to five youths alleged to be delinquent youths. The county determined by the youth court as the residence of a detained youth is responsible for the cost of detention, including medical expenses incurred during detention. *(Repealed effective July 1, 1992—sec. 2, 3, Ch. 511, L. 1991.)*

History: En. Sec. 1, Ch. 630, L. 1987; Sec. 53-30-225, MCA 1989; redes. 52-5-125 by Code Commissioner, 1991.

52-5-126. Youth aftercare agreement. (1) A youth released by the department of family services from one of the state youth correctional facilities to the supervision, custody, and control of the department shall, before his release, sign an aftercare agreement containing:

(a) a statement of the terms and conditions of his release, including a list of the acts which, if committed by the youth, may result in his return to the facility; and

(b) a statement that if the department or any person alleges any violation of the terms and conditions of the agreement, the youth is entitled to a hearing as provided for in 52-5-129 before he may be returned to the facility.

(2) A youth who is released from a state youth correctional facility for commitment to a mental health facility pursuant to Title 53, chapter 21, part 1, shall sign an aftercare agreement that will remain in effect until the youth is returned to the court for further disposition as provided in 41-5-523(1)(j). If the youth is not returned to a state youth correctional facility following the hearing for further disposition, the aftercare agreement becomes void unless amended or extended by the department or the court.

History: En. Sec. 1, Ch. 158, L. 1969; amd. Sec. 48, Ch. 120, L. 1974; amd. Sec. 1, Ch. 429, L. 1975; R.C.M. 1947, 80-1414(part); amd. Sec. 110, Ch. 609, L. 1987; Sec. 53-30-226, MCA 1989; redes. 52-5-126 by Code Commissioner, 1991; amd. Sec. 2, Ch. 201, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (1), before "youth correctional facilities", inserted "state"; and inserted (2) regarding aftercare agreement. Amendment effective July 1, 1991.

Cross-References

Youth Court — retention of jurisdiction, 41-5-205.

52-5-127. Control over youth released under aftercare agreement. The department of family services has control over a youth released under 52-5-126 until he attains the age of 19 years unless the youth is discharged by the department before age 19. However, the youth is subject to the general jurisdiction of the various courts of Montana for acts committed by the youth while under the control of the department.

History: En. Sec. 2, Ch. 158, L. 1969; amd. Sec. 29, Ch. 94, L. 1973; amd. Sec. 49, Ch. 120, L. 1974; amd. Sec. 1, Ch. 15, L. 1975; R.C.M. 1947, 80-1415; amd. Sec. 13, Ch. 609, L. 1987; amd. Sec. 4, Ch. 212, L. 1989; Sec. 53-30-227, MCA 1989; redes. 52-5-127 by Code Commissioner, 1991.

Cross-References

Adult rights, Art. II, sec. 14, Mont. Const.

52-5-128. Detention of youth who violates aftercare agreement. A youth who violates the terms and conditions of his aftercare agreement may be detained by the department of family services or by a law officer of the state, county, or city of the state upon certificates in writing to the officer by the department to the effect that the youth has violated the terms and conditions of his aftercare agreement.

History: En. Sec. 3, Ch. 158, L. 1969; amd. Sec. 50, Ch. 120, L. 1974; amd. Sec. 3, Ch. 429, L. 1975; R.C.M. 1947, 80-1416; amd. Sec. 13, Ch. 609, L. 1987; Sec. 53-30-228, MCA 1989; redes. 52-5-128 by Code Commissioner, 1991.

52-5-129. *(Temporary)* **Hearing on alleged violation of aftercare agreement — right to appeal outcome.** (1) When it is alleged by an aftercare counselor that a youth has violated the terms of his aftercare agreement, the youth shall be granted a hearing at the site of the alleged violation or in the county where the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the youth correctional facility from which he was released or a different plan for treatment should be pursued by the department of family services.

(2) The youth, upon advice of an attorney, may waive his right to a hearing.

(3) With regard to this hearing, the youth shall be given:

(a) written notice of the alleged violation of his aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against him and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him and to show that there are compelling reasons that justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.

(4) The department shall appoint a referee, who may not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, he shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department by giving

written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or he may abscond or be removed from the community. The department shall determine the place and manner of detention and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement are as provided in 41-5-303(2) through (6), 41-5-306, 41-5-308, and 41-5-314.

(8) If the decision is made to return the youth to the youth correctional facility from which he was released and the youth appeals that decision, he shall await the outcome of the appeal at the facility.

52-5-129. *(Effective July 1, 1992)* **Hearing on alleged violation of aftercare agreement — right to appeal outcome.** (1) When it is alleged by an aftercare counselor that a youth has violated the terms of his aftercare agreement, the youth must be granted a hearing at the site of the alleged violation or in the county in which the youth is residing or is found within 10 days after notice has been served on the youth or the youth is detained, whichever is earlier. The purpose of the hearing is to determine whether the youth committed the violation and, if so, whether the violation is of such a nature that he should be returned to the youth correctional facility from which he was released or a different plan for treatment should be pursued by the department of family services.

(2) The youth, upon advice of an attorney, may waive his right to a hearing.

(3) With regard to this hearing, the youth must be given:

(a) written notice of the alleged violation of his aftercare agreement, including notice of the purpose of the hearing;

(b) disclosure of the evidence against him and the facts constituting the alleged violation;

(c) opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him and to show that there are compelling reasons that justify or mitigate the violation;

(d) opportunity to have the referee subpoena witnesses;

(e) the right to confront and cross-examine adverse witnesses;

(f) the right to be represented by an attorney;

(g) a record of the hearing; and

(h) notice that a written statement as to the evidence relied upon in reaching the final decision and the reasons for the final decision will be provided by the referee.

(4) The department shall appoint a referee, who may not be an employee of the department, to conduct the hearing. In the conduct of the hearing, the department may request the county attorney's assistance as necessary. The department shall adopt rules necessary to effect a prompt and full review.

(5) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the violation, he shall make a recommendation to the department for the placement of the youth. In making this recommendation, the referee may consider mitigating circumstances. Final approval rests with the department and must be made within 10 days of the referee's recommendation.

(6) The youth may appeal from the decision at the hearing to the district court of the county in which the hearing was held by serving and filing a notice of appeal with the court within 10 days of the department's decision. The youth may obtain a written transcript of the hearing from the department by giving written notice of appeal. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the department and shall proceed to a prompt hearing on the appeal based upon the record on appeal. The decision of the department may not be altered except for abuse of discretion or manifest injustice.

(7) Pending the hearing on a violation and pending the department's decision, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others or he may abscond or be removed from the community. The department shall determine the place and manner of detention and is responsible for the cost of the detention. Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement are as provided in 41-5-303, 41-5-306, 41-5-311, and 41-5-314.

(8) If the decision is made to return the youth to the youth correctional facility from which he was released and the youth appeals that decision, he shall await the outcome of the appeal at the facility.

History: (1), (3) thru (7)En. 80-1414.1 by Sec. 2, Ch. 429, L. 1975; amd. Sec. 1, Ch. 231, L. 1977; Sec. 80-1414.1, R.C.M. 1947; (2)En. Sec. 1, Ch. 158, L. 1969; amd. Sec. 48, Ch. 120, L. 1974; amd. Sec. 1, Ch. 429, L. 1975; Sec. 80-1414, R.C.M. 1947; R.C.M. 1947, 80-1414(part), 80-1414.1; (8)En. Sec. 1, Ch. 242, L. 1979; amd. Sec. 31, Ch. 465, L. 1983; amd. Sec. 13, Ch. 475, L. 1987; amd. Sec. 111, Ch. 609, L. 1987; amd. Sec. 11, Ch. 434, L. 1989; Sec. 53-30-229, MCA 1989; redes. 52-5-129 by Code Commissioner, 1991; amd. Sec. 11, Ch. 547, L. 1991.

Compiler's Comments

1991 Amendment: In (7) deleted reference to subsections of 41-5-303, deleted reference to 41-5-308, and inserted reference to 41-5-311; and made minor changes in style. Amendment effective July 1, 1992.

Cross-References

Release or delivery from custody, 41-5-307.

CHAPTER 6

BATTERED SPOUSES

Part 1 — Battered Spouses Grant Programs

52-6-101. Battered spouses and domestic violence grant program created.
52-6-102. Duties of department.

52-6-103. Authorized grantees — criteria for grants.
52-6-104. Authorized services of programs.
52-6-105. Funding.

Part 1

Battered Spouses Grant Programs

Part Cross-References

Department of Social and Rehabilitation Services, Title 2, ch. 15, part 22.

Criminal offense of domestic abuse, 45-5-206.

Notice of rights to victim upon arrest in domestic violence situation, 46-6-602.

52-6-101. Battered spouses and domestic violence grant program created. There is a grant program established within the department of family services for the allocation of grant money to local battered spouses and domestic violence programs.

History: En. Sec. 1, Ch. 677, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 40-2-401, MCA 1989; redes. 52-6-101 by Code Commissioner, 1991.

52-6-102. Duties of department. The department of family services:

(1) shall adopt rules necessary to carry out the purposes of this part;

(2) may spend no more than 5% of the appropriated funds for administrative costs of the program;

(3) shall accept federal funds that may be available for use in carrying out the provisions of this part;

(4) may use state funds as a match for federal funds if required; and

(5) may conduct research and compile statistics relating to battered spouses and domestic violence.

History: En. Sec. 5, Ch. 677, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 40-2-402, MCA 1989; redes. 52-6-102 by Code Commissioner, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

52-6-103. Authorized grantees — criteria for grants. (1) The department of family services must award battered spouses and domestic violence grants only to local domestic abuse programs that are locally controlled. Grants may be awarded to governmental or nongovernmental agencies or persons.

(2) Battered spouses and domestic violence grants are to be awarded on the following basis:

(a) demonstrated need;

(b) project merit;

(c) administrative design; and

(d) efficiency of administration.

History: **En. Sec. 3, Ch. 677, L. 1979; amd. Sec. 11, Ch. 609, L. 1987; Sec. 40-2-403, MCA 1989; redes. 52-6-103 by Code Commissioner, 1991.**

52-6-104. Authorized services of programs. (1) Local battered spouses and domestic violence programs may provide services that include but are not limited to the following:

(a) counseling for victims or their spouses;

(b) shelters or safe homes for victims;

(c) advocacy programs that assist victims in obtaining services and information; and

(d) educational programs relating to battered spouses and domestic violence designed for both the community at large and specialized groups such as hospital personnel and law enforcement officials.

(2) The services authorized in subsection (1) may be provided on a regional basis by a local battered spouses and domestic violence program if so authorized by the department of family services according to regional boundaries established by the department.

History: **En. Sec. 4, Ch. 677, L. 1979; amd. Sec. 3, Ch. 493, L. 1981; amd. Sec. 11, Ch. 609, L. 1987; Sec. 40-2-404, MCA 1989; redes. 52-6-104 by Code Commissioner, 1991.**

52-6-105. Funding. (1) Revenue from the marriage license fee, the fee collected for filing a declaration of marriage without solemnization, and the portion of fines allocated to this program by 46-18-235 is the primary source of funding for the battered spouses and domestic violence program. The disposition of the marriage license fee is as established in 25-1-201.

(2) Twenty percent of the operational costs of a battered spouses and domestic violence program must come from the local community served by the program. The local contribution may include in-kind contributions.

History: **En. Sec. 2, Ch. 677, L. 1979; amd. Sec. 4, Ch. 493, L. 1981; amd. Sec. 3, Ch. 12, L. 1983; amd. Sec. 2, Ch. 553, L. 1987; Sec. 40-2-405, MCA 1989; redes. 52-6-105 by Code Commissioner, 1991.**

Cross-References

Marriage license issuance — fee, 40-1-202.

Declaration of marriage without solemnization — fee, 40-1-311.

TITLE 53

SOCIAL SERVICES AND INSTITUTIONS

Ch.
1. General Administration of Institutions.
2. Administration of Public Assistance.
3. General Relief.
4. Children's Services.
5. Adult Services.
6. Health Care Services.
7. Vocational Rehabilitation.
8. Economic Opportunity. Repealed. Sec. 63, Ch. 16, L. 1991.
9. Services for Victims of Crime.
10. Administration of Human Services.
Chapters 11 through 17 reserved.
18. Self-Sufficiency Trusts.
19. Physically Disabled.
20. Developmentally Disabled.
21. Mentally Ill.
22. Interstate Compact on Mental Health.
23. Eugenical Sterilization. Repealed. Sec. 1, Ch. 286, L. 1981.
24. Alcoholism and Drug Dependence.
Chapters 25 through 29 reserved.
30. Corrections.

Title Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

CHAPTER 1

GENERAL ADMINISTRATION OF INSTITUTIONS

Part 1 — General Provisions

53-1-101. Definitions.
53-1-102. Removal of patients from state custodial institutions without permission a misdemeanor.
53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions a misdemeanor.
53-1-104. Release of arsonist — notification of department of justice.
53-1-105. Disposition of contraband in correctional institution.
53-1-106. Exchange of offenders under treaty.

Part 2 — Department of Corrections and Human Services

53-1-201. Purpose of department.
53-1-202. Department of corrections and human services.
53-1-203. Powers and duties of department.
53-1-204. Responsibility of warden and superintendents of institutions.
53-1-205. Repealed.

53-1-206. Participation by institutions in research programs.

Part 3 — Institutional Industries

53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates.
53-1-302. Disposition of receipts from sale of goods.
53-1-303. Prohibited acts.
53-1-304. Supervision of industries program.

Part 4 — Per Diem Payments for Institutional Care

53-1-401. Definitions.
53-1-402. Residents subject to per diem and ancillary charges.
53-1-403. Rules.
53-1-404. When per diem to be computed.
53-1-405. Monthly assessment of charges.
53-1-406. Investigation of ability to pay.
53-1-407. Appeal of determination of ability to pay.
53-1-408. Periodic review by department of ability to pay.
53-1-409. Liability of resident or responsible person for assessed charges.
53-1-410. Nonpayment not grounds for release.
53-1-411. Collections by department of revenue.
53-1-412. Collections from estates.
53-1-413. Deposit of payments.

Part 5 — Per Diem Payments for Residential Correctional Programs

53-1-501. Rates for board and room charged by the department.

Chapter Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

Part 1

General Provisions

53-1-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(2) "Director" means the director of corrections and human services provided for in 2-15-2301.

(3) "Institution" means any of the institutions listed in 53-1-202.

History: En. Sec. 2, Ch. 199, L. 1965; amd. Sec. 39, Ch. 120, L. 1974; R.C.M. 1947, 80-1402; amd. Sec. 1, Ch. 495, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services" and "director of institutions" to "director of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code

Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-1-102. Removal of patients from state custodial institutions without permission a misdemeanor. (1) A person, other than a parent or one having legal custody of the person of the patient or inmate, who permits or assists a resident patient or inmate of a state custodial institution to leave the institution without permission from the properly authorized member of the staff or proper court order is guilty of a misdemeanor and upon conviction is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: En. Sec. 1, Ch. 361, L. 1971; R.C.M. 1947, 80-1417.

Cross-References

Escape, 45-7-306.

53-1-103. Distribution of alcoholic beverages or drugs to patients at state custodial institutions a misdemeanor. (1) A person who knowingly sells or distributes or attempts to sell or distribute alcoholic beverages or drugs to the resident patients or inmates of a state custodial institution without permission of the medical staff is guilty of a misdemeanor and, upon conviction, is punishable by imprisonment in a county jail not exceeding 6 months or by a fine not exceeding $500, or both.

(2) Nothing herein is to be construed to conflict with laws relative to inmates of the Montana state prison.

History: En. Sec. 1, Ch. 362, L. 1971; R.C.M. 1947, 80-1418.

Cross-References

Liquor administered to institution inmates, 16-6-309.

53-1-104. Release of arsonist — notification of department of justice. (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson or of a person acquitted of arson on the ground of mental disease or defect shall give written notification to the department of justice whenever such a person is admitted or released by it:

(a) Montana state hospital;
(b) State prison;
(c) Mountain View school;
(d) Pine Hills school;
(e) Swan River forest camp; or
(f) Any county or city detention facility.

(2) The notification shall disclose:

(a) the name of the person;
(b) where the person is or will be located; and
(c) the type of fire the person was involved in.

History: En. 80-1403.1 by Sec. 1, Ch. 206, L. 1977; R.C.M. 1947, 80-1403.1; amd. Sec. 10, Ch. 361, L. 1983; amd. Sec. 9, Ch. 363, L. 1983; amd. Sec. 9, Ch. 14, Sp. L. June 1986; amd. Sec. 68, Ch. 609, L. 1987.

Cross-References

Department of Justice, Title 2, ch. 15, part 20.

Negligent arson, 45-6-102.

Arson, 45-6-103.

53-1-105. Disposition of contraband in correctional institution. (1) Cash possessed in excess of the amount allowed by the policy of an adult or youth correctional institution or obtained in violation of such a policy may be confiscated and deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

(2) The department of corrections and human services shall adopt policies for the disposition of other contraband confiscated from inmates or residents in adult or youth correctional institutions. Receipts from the sale of contraband must be deposited in an inmate or resident welfare fund to be used for the intended purpose of that fund.

History: En. Sec. 1, Ch. 325, L. 1985; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Youthful offenders, Title 52, ch. 5, part 1.

Powers and duties of Department of Corrections and Human Services, 53-1-203.

Adult offenders — Montana State Prison, Title 53, ch. 30, part 1.

53-1-106. Exchange of offenders under treaty. If a treaty in effect between the United States and a foreign country provides for the transfer, by exchange or otherwise, of convicted offenders to the country of which they are citizens or nationals, the governor may, on behalf of the state and subject to the terms of the treaty, authorize the director of the department of corrections and human services to consent to the transfer or exchange of offenders in Montana institutions and take any other action necessary to initiate the participation of this state in the treaty.

History: En. Sec. 1, Ch. 300, L. 1985; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Powers and duties of Governor, 2-15-201.

Part 2

Department of Corrections and Human Services

Part Cross-References

Department of Corrections and Human Services — head, 2-15-2301.

Cooperative agreements with district weed boards, 7-22-2151.

53-1-201. Purpose of department. The department shall utilize at maximum efficiency the resources of state government in a coordinated effort to:

(1) develop and maintain comprehensive services and programs in the fields of:

(a) adult corrections;

(b) mental health; and

(c) chemical dependency;

(2) provide inpatient institutional care for developmentally disabled persons who require that care according to the requirements of Title 53, chapter 20; and

(3) provide nursing home care for honorably discharged veterans as provided by law.

History: En. Sec. 1, Ch. 199, L. 1965; amd. Sec. 38, Ch. 120, L. 1974; R.C.M. 1947, 80-1401; amd. Sec. 69, Ch. 609, L. 1987; amd. Sec. 4, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment: Deleted former (1) through (6) that read: "(1) restore the physically or mentally disabled;

(2) rehabilitate the violators of law;

(3) sustain the vigor and dignity of the aged;

(4) train children of limited mental capacity to their best potential;

(5) rededicate the resources of the state to the productive independence of its now dependent citizens; and

(6) coordinate and apply the principles of modern institutional administration to the institutions of the state"; inserted (1) relating to comprehensive services and programs for adult corrections, mental health, and chemical dependency; inserted (2) relating to inpatient institutional care for developmentally disabled person; and inserted (3) relating to nursing home care for honorably discharged veterans. Amendment effective July 1, 1991.

53-1-202. Department of corrections and human services. (1) The following components are in the department of corrections and human services to carry out the purposes of the department:

(a) adult corrections services consisting of the following institutional components to incarcerate and rehabilitate felons pursuant to Title 46, chapter 18:

(i) Montana state prison;

(ii) Swan River forest camp;

(iii) the Montana women's correctional center; and

(iv) appropriate community-based programs for the placement, supervision, and rehabilitation of adult felons who meet the criteria developed by the department for placement:

(A) in prerelease centers;

(B) under intensive supervision;

(C) under parole or probation pursuant to Title 46, chapter 23, part 2; or

(D) in other appropriate programs;

(b) mental health services consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) Montana state hospital;

(ii) Montana center for the aged; and

(iii) a community services component consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 2;

(c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(d) institutional and residential components of the developmental disabilities system for those developmentally disabled persons who require that care according to Title 53, chapter 20, consisting of:

(i) the Montana developmental center; and

(ii) Eastmont human services center; and

(e) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

(i) Montana veterans' home; and

(ii) eastern Montana veterans' home at Glendive.

(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the legislature.

History: En. Sec. 3, Ch. 199, L. 1965; amd. Sec. 1, Ch. 320, L. 1967; amd. Sec. 1, Ch. 280, L. 1969; amd. Sec. 40, Ch. 120, L. 1974; R.C.M. 1947, 80-1403; amd. Sec. 174, Ch. 575, L. 1981; amd. Sec. 1, Ch. 132, L. 1983; amd. Sec. 11, Ch. 361, L. 1983; amd. Sec. 10, Ch. 363, L. 1983; amd. Sec. 2, Ch. 151, L. 1985; amd. Sec. 10, Ch. 14, Sp. L. June 1986; amd. Sec. 70, Ch. 609, L. 1987; amd. Sec. 15, Ch. 683, L. 1989; amd. Sec. 5, Ch. 262, L. 1991; amd. Sec. 1, Ch. 305, L. 1991; amd. Sec. 8, Ch. 651, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 262 in (1) substituted present language outlining components of Department of Corrections and Human Services for former (1)(a) through (1)(h) that listed institutions in the Department of Institutions (see 1989 MCA for text). Amendment effective July 1, 1991.

Chapter 305 in (1)(e)(i), after "home", deleted "at Columbia Falls"; and at beginning of (1)(e)(ii) inserted "eastern" and after "home" deleted "in eastern Montana".

Chapter 651 inserted reference to Montana women's correctional center; and made minor change in style. Amendment effective April 26, 1991.

53-1-203. Powers and duties of department. The department shall:

(1) adopt rules for the admission, custody, transfer, and release of persons in department programs except as otherwise provided by law; however, no such rules may amend or alter the statutory powers and duties of the state board of pardons;

(2) subject to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) contract with private nonprofit Montana corporations to establish and maintain community based prerelease centers for purposes of preparing inmates of the Montana state prison who are approaching parole eligibility or discharge for release into the community; the centers shall provide a less restrictive environment than the prison while maintaining adequate security; the centers shall be operated in coordination with other department correctional programs, including the supervised release program provided for in

Title 46, chapter 23, part 4. Nothing in this subsection shall affect the department's authority to operate and maintain community based prerelease centers in existence on July 14, 1982.

(4) utilize the staff and services of other state agencies and units of the Montana university system, within their respective statutory functions, to carry out its functions under this title;

(5) propose programs to the legislature to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

(6) encourage the establishment of programs at the local level for the prevention and rehabilitation of disabilities as they relate to mental illness and chemical dependency and encourage the establishment of programs at the local and institutional level for the rehabilitation and education of adult felony offenders.

History: En. Sec. 5, Ch. 199, L. 1965; amd. Sec. 3, Ch. 320, L. 1967; amd. Sec. 33, Ch. 93, L. 1969; amd. Sec. 41, Ch. 120, L. 1974; amd. Sec. 43, Ch. 37, L. 1977; R.C.M. 1947, 80-1405; amd. Sec. 1, Ch. 4, Sp. L. 1982; amd. Sec. 6, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment: In (1) substituted "persons in department programs" for "residents of institutions"; and in (6) substituted "disabilities as they relate to mental illness and chemical dependency" for "physical and mental disability" and inserted phrase relating to establishment of programs for adult felony offenders. Amendment effective July 1, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

General powers and duties of Department of Administration, 18-2-105.

General provisions of Board of Pardons, Title 46, ch. 23, part 1.

Disposition of contraband in correctional institution, 53-1-105.

Community-based services, Title 53, ch. 20, part 2.

53-1-204. Responsibility of warden and superintendents of institutions. The warden or superintendents of institutions in the department are responsible for the immediate management and control of their respective institutions, subject to the general policies and programs established by the department.

History: En. Sec. 6, Ch. 199, L. 1965; amd. Sec. 42, Ch. 120, L. 1974; R.C.M. 1947, 80-1406.

Cross-References

Qualifications of warden, 53-30-102.

53-1-205. Repealed. Sec. 3, Ch. 495, L. 1979.

History: En. 80-1407.1 by Sec. 43, Ch. 120, L. 1974; R.C.M. 1947, 80-1407.1.

53-1-206. Participation by institutions in research programs. The department may direct a penal and corrective institution of the state to participate in and cooperate with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana, or by any foundation or agency thereof in the fields of science, health, education, and natural resources. These programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof and may not become a part of the regular budgeted operation of the institution.

History: En. Sec. 1, Ch. 98, L. 1967; amd. Sec. 47, Ch. 120, L. 1974; amd. Sec. 45, Ch. 37, L. 1977; R.C.M. 1947, 80-1413.

Cross-References

Research programs — powers of units, 20-25-108.

Part 3

Institutional Industries

53-1-301. Permitted institutional industries, powers of department, and incentive pay to inmates. (1) Except as provided in subsection (3), the department may:

(a) establish industries in institutions which will result in the production or manufacture of such products and the rendering of such services as may be needed by any department or agency of the state or any political subdivision thereof, by any agency of the federal government, by any other states or their political subdivisions, or by nonprofit organizations and that will assist in the rehabilitation of residents in institutions;

(b) contract with private industry for the sale of goods or components manufactured or produced in shops under its jurisdiction;

(c) print catalogs describing goods manufactured or produced by institutions and distribute the catalogs;

(d) fix the sale price for goods produced or manufactured at institutions. Prices shall not exceed prices existing in the open market for goods of comparable quality.

(e) require institutions to purchase needed goods from other institutions;

(f) provide for the repair and maintenance of property and equipment of institutions by residents of institutions;

(g) provide for construction projects up to the aggregate sum of $25,000 per project, by residents of institutions; provided, however, said construction work is not covered by a collective bargaining agreement;

(h) provide for the repair and maintenance at an institution of furniture and equipment of any state agency;

(i) provide for the manufacture at an institution of motor vehicle license plates and other related articles;

(j) with the approval of the department, sell manufactured or agricultural products and livestock on the open market;

(k) provide for the manufacture at an institution of highway, road, and street marking signs for the use of the state or any of its political subdivisions, except when the manufacture of the signs is in violation of a collective bargaining contract;

(l) pay an inmate or resident of an institution from receipts from the sale of products produced or manufactured or services rendered in a program in which he is working.

(2) (a) Payment for the performance of work may be based on the following criteria:

(i) knowledge and skill;

(ii) attitude toward authority;

(iii) physical effort;

(iv) responsibility for equipment and materials;

(v) regard for safety of others.

(b) The maximum rate of pay shall be determined by the appropriation established for each program.

(3) Except as provided in subsection (4), furniture made in the prison may be purchased by state agencies in accordance with the procurement provisions under Title 18, chapter 4. All other prison-made furniture may be sold only through licensed wholesale or retail furniture outlets or through export firms for sale to international markets.

(4) Any state institution, facility, or program operated by the department may purchase prison-made furniture without complying with the procurement provisions under Title 18, chapter 4.

(5) The department may provide for construction of the project authorized in section 2, Chapter 1, Special Laws of May 1990, by inmates at the Montana state prison. *(Subsection (5) terminates July 1, 1991—sec. 6, Ch. 1, Sp. L. May 1990.)*

History: En. Sec. 10, Ch. 199, L. 1965; amd. Sec. 51, Ch. 120, L. 1974; amd. Sec. 1, Ch. 275, L. 1975; R.C.M. 1947, 80-1501; amd. Sec. 1, Ch. 433, L. 1979; amd. Sec. 1, Ch. 426, L. 1981; amd. Sec. 1, Ch. 530, L. 1985; amd. Sec. 1, Ch. 1, Sp. L. May 1990.

Cross-References

State procurement generally, Title 18, ch. 4.

Prison industries training program, 53-30-131 through 53-30-133.

53-1-302. Disposition of receipts from sale of goods. Receipts from the sale of goods produced or manufactured by an institution shall be deposited in the internal service fund for the use of the industries program of the institution.

History: En. Sec. 11, Ch. 199, L. 1965; R.C.M. 1947, 80-1502; amd. Sec. 2, Ch. 433, L. 1979; amd. Sec. 2, Ch. 426, L. 1981; amd. Sec. 26, Ch. 281, L. 1983; amd. Sec. 1, Ch. 632, L. 1985.

Cross-References

Deposits, Title 17, ch. 6, part 1.

53-1-303. Prohibited acts. Unless permitted by the department, arranging for the labor of a resident of an institution is prohibited.

History: En. Sec. 12, Ch. 199, L. 1965; amd. Sec. 1, Ch. 383, L. 1975; R.C.M. 1947, 80-1503; amd. Sec. 3, Ch. 426, L. 1981.

53-1-304. Supervision of industries program. The industries program shall be supervised by the director of the department of corrections and human services or his designated representative, provided the administration of the industries program is separate from the administration of any institution where the program may be located.

History: En. Sec. 3, Ch. 433, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Department of Corrections and Human Services — head, 2-15-2301.

Part 4

Per Diem Payments for Institutional Care

53-1-401. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Ancillary charge" means the expense of providing identifiable, direct, resident services, including but not limited to:

(a) physicians' services;

(b) x-ray and laboratory services;

(c) dental services;

(d) speech-language pathology and audiology services;

(e) occupational and physical therapy;

(f) medical supplies;

(g) prescribed drugs; and

(h) specialized medical equipment.

(2) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(3) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(4) "Financially responsible person" means a spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.

(5) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(6) "Long-term resident" means a resident in an institution listed in 53-1-402 for a continuous period in excess of 120 days. No absence of a resident from the institution due to a temporary or trial visit may be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(7) "Per diem" means the gross daily budgeted cost of operating an institution or an individual unit of an institution (including certain contracted medical services, depreciation, and associated department costs but excluding the cost of educational programs, federal grants, ancillary charges, and costs not directly identified with patient care) divided by the full-time equivalent resident load.

(8) "Resident" means any person who is receiving care from or who is a resident of an institution listed in 53-1-402.

(9) "Third-party resource" means but is not limited to applicable medicare, medicaid, and personal health care benefits.

History: En. Sec. 14, Ch. 199, L. 1965; amd. Sec. 1, Ch. 336, L. 1974; amd. Sec. 2, Ch. 450, L. 1977; R.C.M. 1947, 80-1602; amd. Sec. 1, Ch. 594, L. 1983; amd. Sec. 1, Ch. 283, L. 1989; amd. Sec. 6, Ch. 413, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-1-402. Residents subject to per diem and ancillary charges. The department shall assess and collect per diem and ancillary charges for the care of residents in the following institutions:

(1) Montana state hospital;
(2) Montana developmental center;
(3) Montana veterans' home;
(4) eastern Montana veterans' home;
(5) Montana center for the aged;
(6) Eastmont human services center.

History: En. Sec. 13, Ch. 199, L. 1965; amd. Sec. 4, Ch. 320, L. 1967; amd. Sec. 1, Ch. 276, L. 1969; amd. Sec. 1, Ch. 191, L. 1971; amd. Sec. 52, Ch. 120, L. 1974; amd. Sec. 1, Ch. 450, L. 1977; R.C.M. 1947, 80-1601; amd. Sec. 2, Ch. 132, L. 1983; amd. Sec. 12, Ch. 361, L. 1983; amd. Sec. 11, Ch. 363, L. 1983; amd. Sec. 3, Ch. 151, L. 1985; amd. Sec. 11, Ch. 14, Sp. L. June 1986; amd. Sec. 2, Ch. 283, L. 1989; amd. Sec. 16, Ch. 683, L. 1989; amd. Sec. 2, Ch. 305, L. 1991.

Compiler's Comments

1991 Amendment: In (3), after "home", deleted "at Columbia Falls"; and at beginning of (4) inserted "eastern" and after "home" deleted "in eastern Montana".

Cross-References

Disability insurance — coverage of services at state institutions — may not be excluded, 33-22-112.

53-1-403. Rules. In addition to the specific provisions of this part which require the department to make rules, the department may make rules for the administration of this part. All rules made by the department under the provisions of this part shall be made pursuant to the provisions of the Montana Administrative Procedure Act.

History: En. 80-1606 by Sec. 2, Ch. 324, L. 1974; amd. Sec. 6, Ch. 450, L. 1977; R.C.M. 1947, 80-1606.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-1-404. When per diem to be computed. The per diem shall be computed on July 1 of each year by the department. If the budgeted costs of an institution change substantially within the fiscal year, the per diem may be adjusted to compensate for those changes.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(part); amd. Sec. 2, Ch. 594, L. 1983.

53-1-405. Monthly assessment of charges. (1) The department shall assess monthly against each resident, financially responsible person, or applicable third-party resource the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge based upon financial information given to the department during its investigation conducted according to the rules of the department.

(2) An assessment made by the department under this section shall be based on the resident's or financially responsible person's ability to pay. The department shall prescribe rules which establish criteria and a procedure for determining ability to pay. The department may not make an assessment which would place an undue financial burden on the resident or the financially responsible person.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(part); amd. Sec. 3, Ch. 594, L. 1983.

53-1-406. Investigation of ability to pay. (1) Each agency of the state shall give all reasonable assistance to the department in obtaining all information necessary for the proper financial investigation of residents or financially responsible persons.

(2) Upon request of the department, the resident or financially responsible person shall make available to the department any financial information which the department considers essential for the purpose of determining ability to pay and which, under federal law, the department is not prohibited from seeking or obtaining from the resident or financially responsible person. Willful failure to provide the financial information requested by the department may result in a determination of ability to pay up to the full per diem and full ancillary charges until such time as the requested information is provided and the department makes a new determination of ability to pay.

(3) (a) A representative of the department authorized by the director may administer oaths, take testimony, and subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for care as provided by this part.

(b) A person who fails to obey the subpoena, upon petition of the department to any judge of a district court of the state, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena when so ordered by the judge may be punished for contempt of court on application of the department to the district court.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(3).

Cross-References

Contempts, Title 3, ch. 1, part 5.

Subpoenas and witnesses, Title 26, ch. 2.

Obligations of parents for support and education of their children, 40-6-211.

Reciprocal duties of parent and child in maintaining each other, 40-6-214.

Duty of child to support indigent parents, 40-6-301.

53-1-407. Appeal of determination of ability to pay. If a resident or financially responsible person disagrees with the final determination of the department as to his ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date of the department's determination in any court of record in Montana having jurisdiction of the resident or financially responsible person liable for payment.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(4); amd. Sec. 2, Ch. 495, L. 1979; amd. Sec. 3, Ch. 283, L. 1989.

Cross-References

Judicial review of contested cases, Title 2, ch. 4, part 7.

53-1-408. Periodic review by department of ability to pay. At appropriate intervals, the department shall review each determination of ability to pay and, if there has been a significant change in a resident's or financially responsible person's ability to pay, shall make a new determination. However, a new determination of ability to pay may not be applied retroactively unless the new determination results in a monthly assessment which is less than the previous monthly assessment or unless the resident or financially responsible person has materially misrepresented any financial information. The department shall make rules to implement the provisions of this section, including but not limited to rules for credit or refund of any overpayment resulting from an assessment retroactively reduced because of a new determination of ability to pay.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(5).

53-1-409. Liability of resident or responsible person for assessed charges. (1) The resident or financially responsible person is liable only for the per diem and ancillary charges which the department has assessed and billed the resident or financially responsible person. If amounts assessed and billed are retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person is liable only for the reduced amount for the period of time covered by the retroactive reduction.

(2) The natural or adoptive parents of long-term residents are liable only for the charges made by the department for care in an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the department.

(3) Natural or adoptive parents of a long-term resident are not liable for any charges made by the department for care of a long-term resident incurred or accrued subsequent to the resident attaining age 18.

(4) (a) No resident or financially responsible person is financially liable for care provided to a resident under any provision of a criminal statute.

(b) Subsection (4)(a) does not apply to a person who is enrolled in the Montana state hospital alcohol program.

History: (1), (4)En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; Sec. 80-1603, R.C.M. 1947; (2), (3)En. 80-1605 by Sec. 1, Ch. 324, L. 1974; amd. Sec. 5, Ch. 450, L. 1977; Sec. 80-1605, R.C.M. 1947; R.C.M. 1947, 80-1603(6), (7), 80-1605; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 4, Ch. 594, L. 1983.

Cross-References

Obligations of parents for support and education of their children, 40-6-211.

Reciprocal duties of parent and child in maintaining each other, 40-6-214.

Duty of child to support indigent parents, 40-6-301.

53-1-410. Nonpayment not grounds for release. A resident of an institution listed in 53-1-402 may not be released by reason of the nonpayment of the per diem or the ancillary charge unless, by certification of a physician consulted by the superintendent of the institution, the release is medically advisable.

History: En. Sec. 15, Ch. 199, L. 1965; amd. Sec. 1, Ch. 240, L. 1969; amd. Sec. 53, Ch. 120, L. 1974; amd. Sec. 2, Ch. 336, L. 1974; amd. Sec. 46, Ch. 37, L. 1977; amd. Sec. 3, Ch. 450, L. 1977; R.C.M. 1947, 80-1603(8).

53-1-411. Collections by department of revenue. If a resident or financially responsible person liable for payment of per diem and ancillary charges due under this part refuses or fails to make the payment, it is collectible by the department of revenue in the manner set forth in Title 17, chapter 4, for the collection of debts owing to the state or by a civil suit brought by the department of revenue in the name of the state of Montana.

History: En. Sec. 16, Ch. 199, L. 1965; amd. Sec. 4, Ch. 450, L. 1977; R.C.M. 1947, 80-1604(1).

53-1-412. Collections from estates. The state has a claim against the estate of a resident or against the estate of a financially responsible person for an amount due to the state at the death of the resident or financially responsible person. The attorney general shall collect any claim which the state may have against the estate. However, the claim may be enforced only to the extent that enforcement does not deprive a surviving spouse, child, or parent of the resident or financially responsible person of:

(1) an amount necessary for reasonable living expenses or educational expenses; or

(2) real estate while it is occupied as a home by the surviving spouse, child, or parent of the resident or financially responsible person.

History: En. Sec. 16, Ch. 199, L. 1965; amd. Sec. 4, Ch. 450, L. 1977; R.C.M. 1947, 80-1604(2).

Cross-References

Creditors' claims against estate, Title 72, ch. 3, part 8.

53-1-413. Deposit of payments. (1) Except as provided in 90-7-220 and subsection (2) of this section, the department shall deposit payments of per diem and ancillary charges in the state treasury to the credit of the general fund.

(2) Payments from the Montana veterans' home shall be deposited in the federal special revenue fund for the benefit of the home, and payments from the Montana state hospital alcohol program shall be deposited to an alcohol state special revenue account.

History: En. Sec. 16, Ch. 199, L. 1965; amd. Sec. 4, Ch. 450, L. 1977; R.C.M. 1947, 80-1604(3); amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 5, Ch. 594, L. 1983; amd. Sec. 4, Ch. 819, L. 1991.

Compiler's Comments

1991 Amendment: In (1) inserted reference to 90-7-220; and made minor change in style. Amendment effective May 24, 1991.

Cross-References

Fund structure, 17-2-102.

Part 5

Per Diem Payments for Residential Correctional Programs

53-1-501. Rates for board and room charged by the department. The department of corrections and human services shall establish and charge reasonable rates for board and room for persons committed to any residential community correctional programs operated by the department. The department is directed to establish policies and rules to implement the charging of reasonable rates of board and room for such programs operated by the department.

History: En. Sec. 1, Ch. 517, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

CHAPTER 2

ADMINISTRATION OF PUBLIC ASSISTANCE

Part 1 — General Provisions

53-2-101. Definitions.
53-2-102. State treasurer to receive funds.

53-2-103. Records and reports.
53-2-104. Audit of public assistance records.
53-2-105. Misuse of public assistance information unlawful.
53-2-106. Penalty for misuse of public assistance information.
53-2-107. Fraudulent obtaining of public assistance treated as theft.
53-2-108. Overpayment of assistance — civil penalty when fraud.
53-2-109. Recipients to report income not previously declared.

Part 2 — Department of Social and Rehabilitation Services

53-2-201. Powers and duties of department.
53-2-202. Attorney general to act as legal adviser to department.
53-2-203. Department to maintain merit system and supervise public assistance personnel.
53-2-204. Renumbered 52-1-104.
53-2-205. Department authorized to establish and collect social services fees.
53-2-206. Department to act as agent of federal government.
53-2-207. Power of department in administering state grants-in-aid.

Part 3 — County Departments of Public Welfare

53-2-301. County departments to be established.
53-2-302. County commissioners ex officio county welfare board.
53-2-303. County attorney and clerk — ex officio duties.
53-2-304. Staff personnel of county department.
53-2-305. County departments under supervision of department.
53-2-306. County department charged with local administration of public assistance.
53-2-307 through 53-2-310. Repealed.
53-2-311 through 53-2-320 reserved.
53-2-321. County authorized to care for indigent and levy taxes therefor.
53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities.
53-2-323. Emergency grants from state funds to counties.

Part 4 — Liability of Applicant's Relatives
(Repealed. Sec. 1, Ch. 310, L. 1981)

Part 5 — Investigations by Department of Revenue

53-2-501. Investigations and enforcement actions by department of revenue.
53-2-502. Cooperation of governmental agencies with department of revenue.
53-2-503. Information made available to department of revenue.
53-2-504. Unauthorized disclosure of information obtained in department of revenue investigations a criminal act.

Part 6 — Grants of Assistance and Liability Therefor—Appeals

53-2-601. Disqualification from public assistance when property transferred for purpose of qualifying for public assistance.
53-2-602. Grants based on need.
53-2-603. Award of public assistance determined after investigation.
53-2-604. Repealed.
53-2-605. Repealed.
53-2-606. Right of appeal.
53-2-607. Assistance not assignable or subject to legal process.
53-2-608. Method of issuing assistance grants.
53-2-609. Revocation of assistance.
53-2-610. County to reimburse department.
53-2-611. Recovery from recipient's estate.
53-2-612. Lien of department or county upon third-party recoveries.
53-2-613. Application for assistance — assignment of support rights.

Part 7 — Work Experience and Training Program
(Repealed. Sec. 14, Ch. 550, L. 1989)

Part 8 — State Assumption of County Public Assistance Programs

53-2-801. Purpose.
53-2-802. Definitions.
53-2-803. Authority to adopt rules.
53-2-804 through 53-2-810 reserved.
53-2-811. Transfer of county public assistance and protective services to state departments.
53-2-812. State assumption — permanent transfer to state — exceptions.
53-2-813. Mill levy for counties transferring public assistance and protective services.
53-2-814 through 53-2-820 reserved.
53-2-821. Creation of advisory councils.
53-2-822. Workfare program required.

Parts 9 and 10 reserved

Part 11 — Coordination of Job Training and Employment Programs

53-2-1101. Legislative findings.
53-2-1102. Legislative intent.
53-2-1103. Definitions.
53-2-1104. Establishment of program.
53-2-1105. State job training coordinating council.
53-2-1106. Private industry councils.
53-2-1107. Job training plan — requirements.
53-2-1108. Performance standards.
53-2-1109. Coordination of services.
53-2-1110. Review of job training plans.

Chapter Cross-References

Provision of economic assistance to misfortunate, Art. XII, sec. 3(3), Mont. Const.

Part 1

General Provisions

53-2-101. Definitions. Unless the context requires otherwise, in this chapter the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(2) "Protective services" means services to children and adults to be provided by the department of family services as permitted by Titles 41 and 53.

(3) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

(4) "Needy person" is one who is eligible for public assistance under the laws of this state.

History: (1), (2)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; (3), (4)En. Sec. 3, Ch. 180, L. 1953; amd. Sec. 1, Ch. 98, L. 1973; amd. Sec. 2, Ch. 379, L.

1977; Sec. 71-235, R.C.M. 1947; (5)En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977; Sec. 71-211, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-211(part), 71-235(2); amd. Sec. 71, Ch. 609, L. 1987; amd. Sec. 1, Ch. 266, L. 1989.

53-2-102. State treasurer to receive funds. The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money for public assistance purposes appropriated by the legislature, received from the United States government, or received from any other source shall be paid into the state treasury to the credit of the department.

History: En. Sec. 1, Part 8, Ch. 82, L. 1937; amd. Sec. 210, Ch. 147, L. 1963; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 36, Ch. 37, L. 1977; R.C.M. 1947, 71-901.

Cross-References

General fiscal duties of State Treasurer, 17-1-111.

53-2-103. Records and reports. (1) Each county department shall keep such records and make such reports and in such detail as the department may from time to time require and shall transmit to the department upon its request copies of applications and any or all other records pertaining to any case.

(2) The department is hereby authorized and directed to keep such records in such form and containing such information as the federal social security board may from time to time require and comply with such provisions as the federal board may from time to time find necessary to assure the correctness and verification of such reports.

History: En. Sec. 20, Part 1, Ch. 82, L. 1937; amd. Sec. 10, Ch. 129, L. 1939; R.C.M. 1947, 71-231.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Public records generally, Title 2, ch. 6, part 1.

County Departments of Public Welfare, Title 53, ch. 2, part 3.

53-2-104. Audit of public assistance records. All applications, information, and records concerning any applicant or recipient of assistance or services under this title are subject to audit for legislative oversight or determination of public assistance fraud.

History: En. 71-231.4 by Sec. 1, Ch. 425, L. 1977; R.C.M. 1947, 71-231.4; amd. Sec. 1, Ch. 38, L. 1979.

Cross-References

Information from state agencies, 5-13-309.

Confidentiality of tax records — information available concerning applicants for public assistance, 15-30-303.

53-2-105. Misuse of public assistance information unlawful. It shall be unlawful for any person, body, association, firm, corporation, or other agency to solicit, disclose, receive, make use of, or to authorize, knowingly permit, participate in, or acquiesce in the use of any lists or names for commercial or political purposes of any nature or for any purpose not directly connected with the administration of public assistance.

History: En. Sec. 2, Ch. 179, L. 1953; R.C.M. 1947, 71-231.2.

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Confidentiality of tax records — information available concerning applicants for public assistance, 15-30-303.

53-2-106. Penalty for misuse of public assistance information. Any person, body, association, corporation, firm, or other agency who shall willfully or knowingly violate any provision of 53-2-105 shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than $25 or more than $1,000, to which may be added imprisonment in the county jail for any determinate period not to exceed 60 days. If the violation is by other than an individual, the imprisonment may be adjusted against any officer, agent, employee, servant, or other person of the association, corporation, firm, or other agency who committed or participated in such violation and is found guilty thereof.

History: En. Sec. 3, Ch. 179, L. 1953; R.C.M. 1947, 71-231.3.

Cross-References

Confidentiality of tax records — information available concerning applicants for public assistance, 15-30-303.

53-2-107. Fraudulent obtaining of public assistance treated as theft. Whoever knowingly obtains by means of a willfully false statement, representation, or impersonation or other fraudulent device public assistance to which he is not entitled is guilty of theft as provided in 45-6-301.

History: En. Sec. 15, Part 1, Ch. 82, L. 1937; amd. Sec. 21, Ch. 37, L. 1977; amd. Sec. 1, Ch. 273, L. 1977; R.C.M. 1947, 71-226.

Cross-References

Fraud, 28-2-404 through 28-2-406.

Liability for acts committed by or for another, Title 45, ch. 2, part 3.

Conspiracy, 45-4-102.

Crime of unauthorized acquisition or transfer of food stamps, 45-6-312.

Perjury and other falsification in official matters, Title 45, ch. 7, part 2.

53-2-108. Overpayment of assistance — civil penalty when fraud. (1) If, due to department error, a recipient receives public assistance for which he is not eligible, the portion of payment that he is not entitled to receive shall be returned at the discretion of the department.

(2) If a person obtains any part of an assistance payment through fraudulent means as specified in 53-2-107, 125% of the amount of assistance to which the person was not entitled shall be repaid and, until fully paid, is a debt due the state.

History: En. Sec. 2, Ch. 257, L. 1979.

53-2-109. Recipients to report income not previously declared. Recipients of public assistance shall notify the department within 10 days of the receipt of any income or resources not previously declared to the department. Failure of the department to verify information provided by the recipient does not absolve the recipient from his obligation to provide accurate information to the department.

History: En. Sec. 1, Ch. 257, L. 1979.

Part 2

Department of Social and Rehabilitation Services

53-2-201. Powers and duties of department. (1) The department shall:

(a) administer or supervise public assistance, including the provision of medical care payments in behalf of recipients of public assistance;

(b) give consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(c) cooperate with other state agencies and develop provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(d) provide services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the administration of public assistance functions and for efficiency and economy;

(e) assist and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with public assistance purposes;

(f) administer all state and federal funds allocated to the department for public assistance and do all things necessary, in conformity with federal and state law, for the proper fulfillment of public assistance purposes; and

(g) make rules governing payment for services and supplies provided to recipients of public assistance.

(2) The department may:

(a) purchase, exchange, condemn, or receive by gift either real or personal property which is necessary to carry out its public assistance functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the department.

(b) contract with the federal government to carry out its public assistance functions. The department may do all things necessary in order to avail itself of federal aid and assistance.

(c) make rules, consistent with state and federal law, establishing the amount, scope, and duration of services to be provided to recipients of public assistance.

History: En. Subd. (a) to (g), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 2, Ch. 199, L. 1951; amd. Sec. 1, Ch. 72, L. 1957; amd. Sec. 20, Ch. 121, L. 1974; amd. Sec. 13, Ch. 37, L. 1977; R.C.M. 1947, 71-210; amd. Sec. 1, Ch. 199, L. 1979; amd. Sec. 1, Ch. 511, L. 1981; amd. Sec. 1, Ch. 465, L. 1983; amd. Sec. 72, Ch. 609, L. 1987.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Procurement generally, Title 18, ch. 4.

Policy regarding child abuse, neglect, and dependency, 41-3-101.

Responsibility of providing child protective services, 41-3-302.

Powers and duties related to youth care facilities, 41-3-1102.

One-step licensing — inspection by other department, Title 50, ch. 8.

Children's services, Title 52, ch. 2.

Community-based long-term care facilities — powers and duties of department, 53-6-402.

53-2-202. Attorney general to act as legal adviser to department. The attorney general of the state shall act as legal adviser to the department, shall perform such legal services as may be required, and may employ such other and additional counsel as may be necessary for this purpose and fix the compensation therefor.

History: En. Sec. 4, Part 1, Ch. 82, L. 1937; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 12, Ch. 37, L. 1977; R.C.M. 1947, 71-207; amd. Sec. 2, Ch. 38, L. 1979.

Cross-References

Attorney General, Title 2, ch. 15, part 5.

53-2-203. Department to maintain merit system and supervise public assistance personnel. (1) The department shall:

(a) maintain a merit system pertaining to qualifications for appointment, terms of office, annual merit rating, releases, promotions, and salary schedules for all public assistance personnel; personnel standards shall conform as far as possible with general standards established or required by the federal government;

(b) have examinations held from time to time throughout the state to establish and furnish to county departments lists, in order of merit, of persons eligible for appointment;

(c) develop policies relating to educational leave of employees and to staff development needs;

(d) supervise the appointment, dismissal, and entire status of the public assistance personnel attached to county boards in accordance with the merit system.

(2) All public assistance personnel shall be residents of this state unless it is impossible to find residents of this state possessing qualifications required by the merit system. If possible, county assistance personnel shall be residents of the county in which they work.

History: En. 71-210.1 by Sec. 21, Ch. 121, L. 1974; R.C.M. 1947, 71-210.1.

Cross-References

Residence — rules for determining, 1-1-215.

State employee classification, compensation, and benefits, Title 2, ch. 18.

53-2-204. Renumbered 52-1-104. Sec. 114, Ch. 609, L. 1987.

53-2-205. Department authorized to establish and collect social services fees. (1) The department is authorized to establish and collect fees for social services furnished which are authorized pursuant to Title XX of the Social Security Act, Public Law 93-647. Such fees shall be based on a schedule determined by the department.

(2) The state share of fees provided by subsection (1) shall be paid to the state treasurer for the credit of the state special revenue fund for the use of the department in providing social services.

History: En. 71-210.4, 71-210.5 by Secs. 1, 2, Ch. 206, L. 1975; R.C.M. 1947, 71-210.4, 71-210.5; amd. Sec. 3, Ch. 38, L. 1979; amd. Sec. 1, Ch. 277, L. 1983.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fund structure, 17-2-102.

53-2-206. Department to act as agent of federal government. The department shall act as the agent of the federal government in public assistance matters of mutual concern in conformity with this title and the federal Social Security Act and in the administration of any federal funds granted to the state to aid in the purposes and functions of the department.

History: En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977; R.C.M. 1947, 71-211(1).

Cross-References

Agency, Title 28, ch. 10.

53-2-207. Power of department in administering state grants-in-aid. In administering or supervising any state or federal funds appropriated or made available to the department for public assistance purposes, the department shall have the authority to:

(1) require as a condition for receiving grants-in-aid that the county shall bear the proportion of the total of local public assistance as is fixed by law relating to such assistance;

(2) make use of all legal processes to enforce the minimum standards prescribed by the department under laws providing for grants-in-aid, provided that such standards shall not exceed in cost the amount derived from levies established by state law; and

(3) require that each part of the public assistance laws shall be in effect in all counties of the state.

History: En. Sec. 8, Part 1, Ch. 82, L. 1937; amd. Sec. 15, Ch. 37, L. 1977; R.C.M. 1947, 71-212.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

County Departments of Public Welfare

Part Cross-References

County boarding and nursing homes for the aged, Title 7, ch. 34, part 23.

State assumption of county public assistance, Title 53, ch. 2, part 8.

53-2-301. County departments to be established. There shall be established in each county of the state, except in a county that has transferred its public assistance and protective services responsibilities to the state under the provisions of part 8 of this chapter, a county department of public welfare, which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public assistance activities of the county. If conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit.

History: En. Subd. (a), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 16, Ch. 37, L. 1977; R.C.M. 1947, 71-213; amd. Sec. 9, Ch. 651, L. 1983; amd. Sec. 73, Ch. 609, L. 1987.

53-2-302. County commissioners ex officio county welfare board. Except in a county that has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the board of county commissioners shall be the ex officio county welfare board and is hereby authorized to devote such additional time for public assistance matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but may not receive compensation for more than 1 day's work for all services performed on the same calendar day.

History: En. Subd. (b), Sec. 9, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 129, L. 1939; amd. Sec. 17, Ch. 37, L. 1977; R.C.M. 1947, 71-214; amd. Sec. 10, Ch. 651, L. 1983; amd. Sec. 74, Ch. 609, L. 1987.

Cross-References

County Commissioners, Title 7, ch. 4, part 21.

53-2-303. County attorney and clerk — ex officio duties. The county attorney shall be, ex officio, the legal adviser to the county welfare board and shall render such legal services as the county or department of family services may require. The county clerk and recorder shall be, ex officio, the secretary and clerk of the county welfare board.

History: En. Subd. (c), Sec. 9, Part 1, Ch. 82, L. 1937; R.C.M. 1947, 71-215; amd. Sec. 62, Ch. 83, L. 1989.

Cross-References

Office of County Clerk, Title 7, ch. 4, part 26.

Office of County Attorney, Title 7, ch. 4, part 27.

53-2-304. Staff personnel of county department. (1) Each county board shall select and appoint from a list of qualified persons furnished by the department of social and rehabilitation services such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the department of social and rehabilitation services, may appoint some fully qualified person listed by the department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the department of social and rehabilitation services may supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare may not dismiss any member of the staff personnel without the approval of the department of social and rehabilitation services. The department may request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause. The final authority for dismissal is the county board. In counties where the department has assumed the administration of welfare duties, the final authority for dismissal is the director of the department.

(2) Public assistance staff personnel attached to the county board shall be paid from state public assistance funds both their salaries and their travel expenses as provided for in 2-18-501 through 2-18-503 when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the department of social and rehabilitation services from county poor funds the full amount of the salaries and travel expenses not reimbursed to the department by the federal government and the full amount of the department's administrative costs which are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the department by the federal government. Under circumstances prescribed by the department of social and rehabilitation services, the reimbursement by the county board of public welfare may be less than the county share as prescribed above. All other administrative costs of the county department shall also be paid from county poor funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the department of social and rehabilitation services shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within 20 days after the presentation of the claim, and the department of social and rehabilitation services shall credit (add) all such reimbursements to its account for administrative costs.

(4) If a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the appropriate department shall select, appoint, and supervise all necessary public assistance and protective services personnel, including if necessary a supervisor of staff personnel. All such personnel are directly responsible to that department.

History: En. Subd. (b), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 129, L. 1939; amd. Sec. 1, Ch. 44, L. 1963; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 48, Ch. 439, L. 1975; amd. Sec. 19, Ch. 37, L. 1977; amd. Sec. 1, Ch. 109, L. 1977; R.C.M. 1947, 71-217; amd. Sec. 11, Ch. 651, L. 1983; amd. Sec. 1, Ch. 146, L. 1987; amd. Sec. 75, Ch. 609, L. 1987.

53-2-305. County departments under supervision of department. County departments are under the supervision of the department of social and rehabilitation services and subject to audit by the department.

History: En. Subd. (c), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 6, Ch. 129, L. 1939; amd. Sec. 22, Ch. 121, L. 1974; R.C.M. 1947, 71-218.

53-2-306. County department charged with local administration of public assistance. Except in a county that has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, the county department of public welfare shall be charged with the local administration of all forms of public assistance operations in the county. All such local administration must conform to federal and state law and the rules as established by the department of social and rehabilitation services.

History: En. Subd. (a), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 5, Ch. 199, L. 1951; amd. Sec. 1, Ch. 201, L. 1975; R.C.M. 1947, 71-221; amd. Sec. 12, Ch. 651, L. 1983; amd. Sec. 76, Ch. 609, L. 1987.

Cross-References

Policy regarding child abuse, neglect, and dependency, 41-3-101.

Crime of unauthorized acquisition or transfer of food stamps, 45-6-312.

53-2-307 through 53-2-310. Repealed. Sec. 28, Ch. 670, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

53-2-307. En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 18, Ch. 37, L. 1977; R.C.M. 1947, 71-216(part); amd. Sec. 13, Ch. 651, L. 1983.

53-2-308. En. Sec. 4, Ch. 131, L. 1943; R.C.M. 1947, 71-111(part).

53-2-309. En. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev. Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. Sec. 2058, Rev. C. 1907; re-en. Sec. 4529, R.C.M. 1921; re-en. Sec. 4529, R.C.M. 1935; amd. Sec. 11, Ch. 37, L. 1977; R.C.M. 1947, 71-113(part).

53-2-310. En. Secs. 1, 2 and 4, pp. 457, 458, Bannack Stat.; re-en. Secs. 1, 2 and 4, p. 535, Cod. Stat. 1871; Sec. 9, p. 54, L. 1876; re-en. Sec. 963, 5th Div. Rev. Stat. 1879; re-en. Sec. 1617, 5th Div. Comp. Stat. 1887; re-en. Sec. 3208, Pol. C. 1895; re-en. Sec. 2058, Rev. C. 1907; re-en. Sec. 4529, R.C.M. 1921; re-en. Sec. 4529, R.C.M. 1935; amd. Sec. 11, Ch. 37, L. 1977; R.C.M. 1947, 71-113(part).

53-2-311 through 53-2-320 reserved.

53-2-321. County authorized to care for indigent and levy taxes therefor. The board of county commissioners has jurisdiction and power under such limitations and restrictions as are prescribed by law to provide for the care and maintenance of the indigent sick, except as otherwise provided in other parts of this title, or the otherwise dependent poor of the county; and for said purposes to levy and collect annually a tax on property not exceeding 13 ½ mills, which levy shall be made at the time other tax levies are made on property, as provided by law.

History: En. Subd. 5, Sec. 1, Ch. 100, L. 1931; re-en. Sec. 4465.4, R.C.M. 1935; amd. Sec. 1, Ch. 165, L. 1941; amd. Sec. 1, Ch. 23, L. 1943; amd. Sec. 11, Ch. 212, L. 1965; amd. Sec. 1, Ch. 69, L. 1967; amd. Sec. 2, Ch. 279, L. 1974; R.C.M. 1947, 71-106; amd. Sec. 1, Ch. 11, Sp. L. 1981; amd. Sec. 4, Ch. 625, L. 1983.

Cross-References

County tax levy for nursing homes and hospital facilities, 7-6-2512.

Incorporation of property tax levy into county all-purpose levy, 7-6-2523.

Erection and maintenance of county buildings, 7-8-2102.

State assumption of county public assistance programs, 53-2-801.

Industrial development projects, Title 90, ch. 5, part 1.

53-2-322. County to levy taxes, budget, and make expenditures for public assistance activities. (1) The board of county commissioners in each county shall levy 13.5 mills for the county poor fund as provided by law or so much thereof as may be necessary. Counties transferring public assistance and protective services responsibilities to the state under part 8 of this chapter may not levy more than the difference between 13.5 mills and the state levy pursuant to 53-2-813.

(2) The board shall budget and expend so much of the funds in the county poor fund for public assistance and protective services purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the department of social and rehabilitation services and the department of family services for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and protective services and its proportionate share of any other public assistance activity that may be carried on jointly by the state and the county.

(3) The amounts set up in the budget for the reimbursements to the department of social and rehabilitation services and the department of family services shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance and protective services activities, and proper accounts shall be established for the funds for all such activities.

(4) The department of social and rehabilitation services shall submit to the counties, no later than May 10, the most current county participation percentages that are necessary to establish preliminary county budgets. As soon as the county proposed budget provided for in 7-6-2315 has been agreed upon, a copy thereof shall without delay be mailed to the department of social and rehabilitation services, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the public assistance laws.

(5) The department of social and rehabilitation services shall promptly examine the county proposed budget in order to ascertain if the amounts provided for reimbursements to the department are likely to be sufficient and shall notify the county clerk of its findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, in order that the county will be able to make the reimbursements in full.

(6) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the department of social and rehabilitation services without having first obtained a statement in writing from the department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(7) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance and protective services or its proportionate share of any other public assistance activity that may be carried on jointly by the state and

the county. Expenditures for improvement of any county buildings used directly for care of the poor, except a county hospital or county nursing home, may be made out of any moneys in the county poor fund, whether such moneys are produced by the 13.5-mill levy provided for in subsection (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the department of social and rehabilitation services and the department of family services.

History: En. Subd. (b), Sec. 11, Part 1, Ch. 82, L. 1937; amd. Sec. 8, Ch. 129, L. 1939; amd. Sec. 3, Ch. 117, L. 1941; amd. Sec. 6, Ch. 199, L. 1951; amd. Sec. 1, Ch. 239, L. 1963; amd. Sec. 2, Ch. 69, L. 1967; amd. Sec. 23, Ch. 121, L. 1974; amd. Sec. 20, Ch. 37, L. 1977; R.C.M. 1947, 71-222; amd. Sec. 5, Ch. 625, L. 1983; amd. Sec. 14, Ch. 651, L. 1983; amd. Sec. 4, Ch. 206, L. 1985; amd. Sec. 2, Ch. 146, L. 1987; amd. Sec. 77, Ch. 609, L. 1987.

Cross-References

County tax levy for nursing homes and hospital facilities, 7-6-2512.

Policy regarding child abuse, neglect, and dependency, 41-3-101.

53-2-323. Emergency grants from state funds to counties. Except when a county has transferred its public assistance and protective services responsibilities to the state under part 8 of this chapter, a county may apply to the department for an emergency grant-in-aid, and the grant shall be made to the county upon the following conditions:

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

(a) that the county will not be able to meet its obligations under law to provide assistance to the needy of the county or meet its proportionate share of any public assistance activity carried on jointly with the department;

(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;

(c) that all expenditures from the county poor fund have been lawfully made; and

(d) that all expenditures from the county poor fund have been reasonable and necessary, according to criteria set by the department in rules adopted for that purpose, for the county to meet its obligations under law to provide assistance to the needy.

(2) Within 10 days of receipt of the application and affidavit, the department shall determine whether the county poor fund will be depleted and shall give notice to the county of the department's intention to deny or allow the grant-in-aid. Before a grant-in-aid for any fiscal year may be made to a county under this section, any money credited during that fiscal year to the depletion allowance reserve fund from the sources provided by 7-34-2402(2) shall be transferred to the county poor fund to be used for lawful poor fund expenditures. The amount of the grant-in-aid shall be determined after all sources of

income available to the poor fund, including the depletion allowance reserve fund transfers, have been exhausted.

(3) Within 10 days of receiving notice from the department that a grant-in-aid will be made to the county, the board of county commissioners or other duly elected or appointed executive officer of the county shall adopt an emergency budget. There is no requirement of notice and hearing for that emergency budget. The emergency budget shall state the amount required to meet the obligation of the county and shall allocate that whole amount among the various classes of expenditures for which the grant was made.

(4) Upon receipt and approval of the county emergency budget, the department shall issue a warrant to the county treasurer of the county for the total amount stated in the approved emergency budget.

(5) The grant-in-aid received by the county shall be placed in an emergency fund account to be kept separate and distinct from the poor fund account. All expenditures from the emergency fund account shall be made by a separate series of warrants or checks marked as emergency warrants or checks.

(6) The grants-in-aid from the department may be used only for public assistance activities lawfully conducted by the county, including but not limited to medical aid, hospitalization, and institutional care. No part of a grant-in-aid may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances, or equipment for a county building.

(7) In the event the county poor fund is replenished by other lawful sources of revenue, the county shall issue warrants to meet its obligations from the county poor fund until such time as that fund is again so depleted that warrants can no longer lawfully be drawn on that account. Upon depletion of the county poor fund, the county may again make disbursements from the emergency fund account as provided in subsection (5). At the close of the county fiscal year, the county shall return to the department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year.

(8) Any amount which is unlawfully disbursed or transferred from the emergency fund account or used for a purpose other than that specified in the grant-in-aid shall be returned by the county to the department.

History: Ap. p. Sec. 9, Part 2, Ch. 82, L. 1937; amd. Sec. 14, Ch. 129, L. 1939; amd. Sec. 7, Ch. 117, L. 1941; amd. Sec. 11, Ch. 199, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 31, Ch. 37, L. 1977; amd. Sec. 1, Ch. 168, L. 1977; Sec. 71-311, R.C.M. 1947; Ap. p. 16-1043 by Sec. 2, Ch. 365, L. 1975; Sec. 16-1043, R.C.M. 1947; R.C.M. 1947, 16-1043(1)(c), 71-311; amd. Sec. 1, Ch. 400, L. 1981; amd. Sec. 15, Ch. 651, L. 1983; amd. Sec. 78, Ch. 609, L. 1987.

Part 4

Liability of Applicant's Relatives (Repealed. Sec. 1, Ch. 310, L. 1981)

Part Compiler's Comments

Histories of Repealed Sections:

53-2-401. En. Sec. 1, Ch. 180, L. 1953; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-233.

53-2-402. En. Sec. 2, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-234.

53-2-403. En. Sec. 3, Ch. 180, L. 1953; amd. Sec. 1, Ch. 98, L. 1973; amd. Sec. 2, Ch. 379, L. 1977; R.C.M. 1947, 71-235(1), (3), (4), (5).

53-2-404. En. Sec. 4, Ch. 180, L. 1953; amd. Sec. 49, Ch. 391, L. 1973; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-236.

53-2-405. En. Sec. 5, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-237.

53-2-406. En. Sec. 6, Ch. 180, L. 1953; R.C.M. 1947, 71-238.

53-2-407. En. Sec. 7, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-239.

53-2-408. En. Sec. 8, Ch. 180, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-240.

Part 5

Investigations by Department of Revenue

Part Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

53-2-501. Investigations and enforcement actions by department of revenue. (1) When requested by the department of social and rehabilitation services, the department of revenue shall:

(a) investigate matters relating to public assistance and vendor payments, including but not limited to the claim for an acceptance of public assistance benefits by public assistance recipients and the receipt and disbursal of public assistance funds by state, county, or other governmental agencies;

(b) institute civil or criminal actions in the appropriate courts to enforce the public assistance laws and violations thereof.

(2) For purposes of the enforcement of and investigations relating to laws governing public assistance and vendor payments, the department of revenue is a criminal justice agency, as defined in 44-5-103, and employees designated by the department have peace officer status with the powers of search, seizure, and arrest.

History: En. Sec. 1, Ch. 295, L. 1973; amd. Sec. 23, Ch. 37, L. 1977; R.C.M. 1947, 71-233.1; amd. Sec. 1, Ch. 129, L. 1989.

Cross-References

State debt collection service — Auditor's office, Title 17, ch. 4.

State collection of child support — dependent children, Title 40, ch. 5, part 2.

Deduction from wages for owed child support, Title 40, ch. 5, part 3.

53-2-502. Cooperation of governmental agencies with department of revenue. All state departments and agencies and county or other governmental agencies shall cooperate with the department of revenue and its employees to effectuate the purpose of this part.

History: **En. Sec. 2, Ch. 295, L. 1973; R.C.M. 1947, 71-233.2.**

53-2-503. Information made available to department of revenue. (1) The department of social and rehabilitation services and its local units shall make available to the department of revenue information contained in the public assistance files pertinent to the investigations and judicial actions described in 53-2-501.

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of revenue all records, files, memoranda, forms, or other papers relating to public assistance matters, including income tax returns filed with the department of revenue.

History: **En. Sec. 3, Ch. 295, L. 1973; amd. Sec. 24, Ch. 37, L. 1977; R.C.M. 1947, 71-233.3.**

53-2-504. Unauthorized disclosure of information obtained in department of revenue investigations a criminal act. (1) No information obtained by the department of revenue or its agents and attorneys as a result of an investigation may be disclosed except in accordance with the laws applicable to the source of information. However, the information may be used or disclosed under 40-5-261 and rules adopted under 40-5-262 or as necessary in any court action.

(2) Each employee violating the disclosure provisions is subject to the criminal charge and penalties applicable to the source of information.

History: **En. Sec. 4, Ch. 295, L. 1973; R.C.M. 1947, 71-233.4; amd. Sec. 4, Ch. 543, L. 1985; amd. Sec. 5, Ch. 418, L. 1989.**

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right to privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

Part 6

Grants of Assistance and Liability Therefor — Appeals

53-2-601. Disqualification from public assistance when property transferred for purpose of qualifying for public assistance. The department may deny public assistance to any person who has divested himself directly or indirectly of any property for the purpose of qualifying for public assistance. The department shall make rules that raise a rebuttable presumption that any transfer of property within 30 months of the date of application for general relief was for the purpose of qualifying for such assistance. The department may also make rules consistent with federal law raising a similar rebuttable presumption for purposes of state-administered federal public assistance programs authorized under Title 53.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 1, Ch. 327, L. 1969; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-242(part); amd. Sec. 1, Ch. 383, L. 1981; amd. Sec. 2, Ch. 266, L. 1989.

Cross-References

Adoption of rules, Title 2, ch. 4, part 3.

Fraudulent conveyances, Title 31, ch. 2, part 3.

53-2-602. Grants based on need. Subject to review by the county board, the staff of the county department shall determine grants and changes in grants, based on the needs of each applicant, after investigation in accordance with the rules and standards of assistance prescribed by the department of social and rehabilitation services.

History: En. Subd. (d), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 129, L. 1939; amd. Sec. 1, Ch. 98, L. 1951; R.C.M. 1947, 71-219; amd. Sec. 1, Ch. 276, L. 1983.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Eligibility and application for general relief, Title 53, ch. 3, part 2.

53-2-603. Award of public assistance determined after investigation. (1) Upon completion of an investigation, the county board shall determine whether the applicant is eligible for public assistance under the provisions of this title, the type and amount of public assistance he shall receive, and the date upon which such public assistance shall begin.

(2) The department, if necessary to conform with the United States Social Security Act, may issue rules to the county welfare departments requiring the use of the declaration method, in such form as the department may prescribe, for the purpose of determining eligibility, regardless of any other investigative provisions under this title, and for all types of assistance. These rules may include any additional investigations the department may require.

History: En. Sec. 1, Ch. 228, L. 1953; amd. Sec. 1, Ch. 327, L. 1969; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-242(part); amd. Sec. 22, Ch. 670, L. 1985.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-2-604. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 16, Part 1, Ch. 82, L. 1937; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-227.

53-2-605. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Subd. (a), Sec. 10, Part 1, Ch. 82, L. 1937; amd. Sec. 4, Ch. 199, L. 1951; amd. Sec. 13, Ch. 212, L. 1965; amd. Sec. 50, Ch. 121, L. 1974; amd. Sec. 18, Ch. 37, L. 1977; R.C.M. 1947, 71-216(part).

53-2-606. Right of appeal. (1) If an application for assistance under this title is not acted upon promptly or if a decision is made with which the applicant or recipient is not satisfied, he may appeal to the board of social and rehabilitation appeals for a fair hearing by addressing a request for a hearing to the department. The board of social and rehabilitation appeals shall, upon receipt of a request for a hearing, give the applicant or recipient prompt notice and opportunity for a fair hearing. A county welfare board which is involved in a grievance shall be represented at such a hearing.

(2) The department may upon its own motion review any decision of a county welfare board and may consider any application upon which a decision has not been made by the county board within a reasonable time from the filing thereof. The department may have an additional investigation made and shall make a decision as to the granting of assistance and the amount of assistance to be granted the applicant as in its opinion is justified and in conformity with the provisions of this title.

(3) If the department reviews a county decision on its own motion, applicants or recipients affected by the decisions of the department shall upon request be given reasonable notice and an opportunity for a fair hearing by the board of social and rehabilitation appeals.

(4) All decisions of the department or the board of social and rehabilitation appeals are final and are binding and shall be complied with by the county department.

History: En. Sec. 12, Part 1, Ch. 82, L. 1937; amd. Sec. 7, Ch. 199, L. 1951; amd. Sec. 1, Ch. 24, L. 1953; amd. Sec. 24, Ch. 121, L. 1974; R.C.M. 1947, 71-223.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested cases, Title 2, ch. 4, part 6.

53-2-607. Assistance not assignable or subject to legal process. Except as otherwise provided in this title, assistance granted under this title is not transferable or assignable at law or in equity and none of the money paid or payable under this title is subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

History: En. Sec. 18, Part 1, Ch. 82, L. 1937; amd. Sec. 26, Ch. 121, L. 1974; R.C.M. 1947, 71-229.

Cross-References

Property exempt from execution, Title 25, ch. 13, part 6.

Exempt property — bankruptcy proceedings, 31-2-106.

53-2-608. Method of issuing assistance grants. (1) Checks in payment of public assistance, with the exception of general relief, shall be issued by the department of social and rehabilitation services upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department, and all such checks will be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee, and the original monthly payment shall be from the state public assistance accounts. All public assistance checks shall represent cash on demand at full par value to the recipient and vendor.

(2) Whenever the department of social and rehabilitation services, acting pursuant to standards established by the department, determines that any otherwise eligible recipient of public assistance has, by reason of any physical

or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare, the department may, under standards established under the state plan, make the public assistance payment on behalf of such recipient to another person found by the department to be interested in or concerned with the welfare of such needy individual.

History: En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957; amd. Sec. 14, Ch. 212, L. 1965; amd. Sec. 1, Ch. 244, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 22, Ch. 37, L. 1977; R.C.M. 1947, 71-230(1), (2); amd. Sec. 1, Ch. 398, L. 1981.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-2-609. Revocation of assistance. If the county department or department of social and rehabilitation services has reason to believe, by reason of a complaint or otherwise, that public assistance under this title has been improperly granted, it shall have an investigation made. If it appears as a result of an investigation that the assistance was improperly granted, the department of social and rehabilitation services shall notify the county department that no further payments shall be authorized for such recipient. The right of appeal is granted recipients whose assistance has been revoked.

History: En. Sec. 17, Part 1, Ch. 82, L. 1937; amd. Sec. 25, Ch. 121, L. 1974; R.C.M. 1947, 71-228.

53-2-610. County to reimburse department. (1) On or before the 20th of each month, the department of social and rehabilitation services shall present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department shall make the reimbursement to the department of social and rehabilitation services within 20 days after the claim is presented.

(2) The counties may not be required to reimburse the department of social and rehabilitation services for:

(a) any portion of public assistance paid to a household eligible for aid to families with dependent children if the household includes an enrolled Indian who is the caretaker relative of a needy dependent child; or

(b) any payment on behalf of any person in a state-operated medical institution.

(3) The federal government may reimburse the state of Montana on behalf of counties providing general relief to enrolled Indians a sum in lieu of taxes which the counties would collect if the lands of such Indians were not in trust status.

(4) (a) From the original date of entrustment or the original date of state residency, whichever is earlier, recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or private charitable institution shall be the financial responsibility of the appropriate county as provided in subsections (4)(b) through (4)(d).

(b) The county in which commitment of an adult is initiated is considered the county of financial responsibility except where court decree declares the residency to be otherwise. When an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment is considered the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located is considered the county of financial responsibility.

(c) In all cases where a minor patient or ward is involved, the county of financial responsibility is the county in which the parent or guardian resides. If the custody of a minor is entrusted to a state agency, the agency may make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section.

(d) If a person is or becomes an adult while in an institution, he may determine his own county of residence when he is restored to competency and released. The person becomes the financial responsibility of the new county of residence.

History: (1)En. Sec. 19, Part 1, Ch. 82, L. 1937; amd. Sec. 1, Ch. 71, L. 1957; amd. Sec. 14, Ch. 212, L. 1965; amd. Sec. 1, Ch. 244, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 22, Ch. 37, L. 1977; Sec. 71-230, R.C.M. 1947; (2)En. Subd. (h), Sec. 7, Part 1, Ch. 82, L. 1937; amd. Sec. 3, Ch. 129, L. 1939; amd. Sec. 1, Ch. 219, L. 1947; amd. Sec. 3, Ch. 199, L. 1951; amd. Sec. 1, Ch. 141, L. 1953; amd. Sec. 12, Ch. 212, L. 1965; amd. Sec. 17, Ch. 325, L. 1967; amd. Sec. 4, Ch. 261, L. 1971; amd. Sec. 14, Ch. 37, L. 1977; Sec. 71-211, R.C.M. 1947; (3)En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; Sec. 71-302.2, R.C.M. 1947; R.C.M. 1947, 71-211(part), 71-230(3), 71-302.2(3); amd. Sec. 1, Ch. 450, L. 1979; amd. Sec. 3, Ch. 266, L. 1989.

Cross-References

Residence — rules for determining, 1-1-215.

53-2-611. Recovery from recipient's estate. (1) Upon the death of any recipient of medical assistance under Title 53, chapter 6, part 1, the department shall execute and present a claim against the estate of such person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under this title, separately stating the amount of all assistance paid on or after July 1, 1953. The department's claim is subject to the limitations specified in 53-6-143(3).

(2) All money recovered under this section from any source must be distributed to the county and to the general fund of the state of Montana according to the county's or state's interests. If the federal law requires, the federal government is entitled to a share of any amounts collected under this section in proportion to the amounts that it has contributed to the grants recovered. The amount due the United States must be promptly paid by the department to the United States government.

History: (1), (2)En. Sec. 7, Ch. 228, L. 1953; amd. Sec. 2, Ch. 299, L. 1973; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-247, R.C.M. 1947; (3)En. Sec. 10, Ch. 228, L. 1953; amd. Sec. 49, Ch. 121, L. 1974; Sec. 71-250, R.C.M. 1947; R.C.M. 1947, 71-247, 71-250; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 3, Ch. 482, L. 1989.

Cross-References

Claims against estate, Title 72, ch. 3, part 8.

53-2-612. Lien of department or county upon third-party recoveries. (1) Upon notice by the department, a county, or the recipient to a third party or his insurer as provided in subsection (5)(b), the department or county has a lien upon all money paid by a third party or his insurer in satisfaction of a judgment or settlement arising from a recipient's claim for damages or compensation for personal injury, disease, illness, or disability to the extent that the department or county has paid medical assistance on behalf of the recipient for the same personal injury, disease, illness, or disability.

(2) The department or county may, in the name of the recipient on whose behalf medical assistance has been paid by the department or county, commence and prosecute to final conclusion any action which may be necessary to recover from a third party or his insurer compensation or damages for medical assistance paid by the department or county on behalf of the recipient. This section does not affect the right of the recipient to initiate and prosecute to final conclusion an action for damages or compensation in his own name in accordance with the provisions of this section.

(3) (a) The lien:

(i) applies to all money paid by a third party or his insurer regardless of whether the recovery is allocated by the parties or a court to any particular type or element of damages; and

(ii) is subordinate to the lien of an attorney under 37-61-420.

(b) Unless specifically provided by law, the recipient's right to recover damages or compensation from a third party or his insurer may not be reduced or denied on the ground that the recipient's costs of medical treatment and medical-related services have been paid by the department or county under any public assistance program.

(c) From the amount collected by the department, county, or recipient from legal proceedings or as a result of settlement, reasonable attorney fees and costs must be first deducted and paid. Unless the department or county and the recipient agree to a different settlement, the amount previously paid as medical assistance by the department or county, less a pro rata share of attorney fees and costs, must be deducted next and paid to the department or county. The remainder, if any, must be paid to the recipient.

(d) In all cases of payment to the department or county out of an amount collected from a third party or insurer on a recipient's claim, the amount of the lien must be reduced by a pro rata share of attorney fees and costs as provided in subsection (3)(c), but the department or county may not be required to participate in payment of attorney fees and costs unless the recipient's claim results in recovery out of which the department or county receives full or partial payment of its lien.

(4) (a) A recipient of medical assistance or his legal representative shall notify the department or county by certified letter within 30 days if the recipient or his legal representative asserts a claim against a third party or his insurer for damages or compensation for a personal injury, disease, illness, or disability for which the department or county paid medical assistance in whole or in part or for which the recipient has applied for medical assistance. The notice must be mailed to the director of the department or the director of the county department that paid medical assistance. At the same time, a copy must be sent by certified mail to the third party or his insurer.

(b) The notice must contain the following information:

(i) the name and address of the recipient and his legal representative, if any;

(ii) the name and address of the third party alleged to be liable to the recipient;

(iii) the name and address of any known insurer of the third party; and

(iv) the judicial district and docket number of any action filed.

(c) A recipient or his legal representative who has received actual notice that the department or county has paid medical assistance is liable to the department or county for the amount it is entitled to receive under this section if:

(i) the recipient or his legal representative fails to timely notify the department or county or fails to mail a copy of the notice to the third party or his insurer; and

(ii) a third party or his insurer that did not receive notice from the department or county as provided for in subsection (5)(b) pays the recipient or his legal representative without satisfying any lien of the department or county.

(5) (a) If a third party or his insurer that has received notice of the department's or county's lien as provided for in subsection (5)(b) makes payment in whole or in part of the recipient's claim without first satisfying the lien of the department or county, the third party or his insurer is liable to the department or county for the amount the department or county is entitled to receive under this section.

(b) For the purposes of subsection (5)(a), a third party or his insurer has been given notice if:

(i) the department or county mails, by certified mail, to the third party or his insurer:

(A) a statement of the medical assistance paid or which may be paid by the department or county on behalf of the recipient; and

(B) a claim for reimbursement;

(ii) the recipient or his legal representative mails, by certified mail, to the third party or his insurer:

(A) a copy of the notice required by subsection (4)(a); or

(B) a statement stating that the recipient has applied for or has received medical assistance from the department or county in connection with the same claim; or

(iii) the recipient or his legal representative has commenced an action against the third party or his insurer for damages or compensation for personal injury, disease, illness, or disability for which the department or county has paid or may pay medical assistance, in whole or in part, and the department or county files in the court in which the action is pending a notice of lien stating that a lien is claimed for medical assistance on any money paid in satisfaction of any judgment in or settlement of the action and that:

(A) medical assistance in a stated amount has been paid by the department or county on behalf of the recipient; or

(B) medical assistance may be paid on behalf of the recipient.

(6) As used in this section, the following definitions apply:

(a) "County" means a county department of welfare in a county that has not transferred its public assistance responsibilities to the state under the provisions of Title 53, chapter 2, part 8.

(b) "Legal representative" means an attorney having or exercising authority on behalf of a recipient with respect to a claim or action to recover damages or compensation from a third party or his insurer.

(c) "Recipient" means a person on whose behalf the department or a county has paid or may pay medical assistance for the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability. If the context allows, the term includes a recipient's legal representative.

(d) "Third party" means an individual, institution, corporation, or public or private agency that is or may be liable to pay all or part of the cost of medical treatment and medical-related services for personal injury, disease, illness, or disability of a recipient of medical assistance from the department or a county and includes but is not limited to insurers, health service organizations, and parties liable or who may be liable in tort.

History: En. 71-241.1 by Sec. 1, Ch. 379, L. 1977; R.C.M. 1947, 71-241.1; amd. Sec. 1, Ch. 535, L. 1985; amd. Sec. 1, Ch. 482, L. 1989.

53-2-613. Application for assistance — assignment of support rights. (1) Applications for public assistance, including but not limited to aid to families with dependent children and medical assistance, must be made to the county department of public welfare in the county in which the person is residing. The application shall be submitted, the manner and form prescribed by the department of social and rehabilitation services, and shall contain information required by the department of social and rehabilitation services.

(2) A person by signing an application for public assistance assigns to the state, the department of social and rehabilitation services, and to the county welfare department all rights the applicant may have to support and medical payments from any other person in his own behalf or in behalf of any other family member for whom application is made.

(3) The assignment:

(a) is effective for both current and accrued support and medical obligations;

(b) takes effect upon a determination that the applicant is eligible for public assistance;

(c) remains in effect with respect to the amount of any unpaid support and medical obligation accrued under the assignment that was owed prior to the termination of public assistance to a recipient.

(4) Whenever a support obligation is assigned to the department of social and rehabilitation services pursuant to this section, the following provisions apply:

(a) If such support obligation is based upon a judgment or decree or an order of a court of competent jurisdiction, the department may retain assigned support amounts in an amount sufficient to reimburse public assistance money expended.

(b) No recipient or former recipient of public assistance may commence or maintain an action to recover a delinquent support obligation without notifying the department. The department may then release or relinquish its assigned interest or enter the proceeding. This subsection (4)(b) does not limit the right of any person to recover money not assigned.

(c) If a notice of assigned interest is filed with the district court, the clerk of the court may not pay over or release for the benefit of any recipient or former recipient of public assistance any amounts received pursuant to a judgment or decree or an order of the court until the department has filed a written notice that:

(i) the assignment of current support amounts has been terminated; and

(ii) all assigned support delinquencies, if any, are satisfied or released.

(d) No recipient or former recipient of public assistance may take action to modify or make any agreement to modify, settle, or release any past, present, or future support obligation unless the department is given written notice and an opportunity to participate. Any modifications or agreements entered into without the participation of the department are void with respect to the state, the department of social and rehabilitation services, and the county welfare department.

History: En. Sec. 1, Ch. 79, L. 1981; amd. Sec. 1, Ch. 131, L. 1987; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 25, Ch. 702, L. 1989.

Cross-References

Residence — rules for determining, 1-1-215.

State debt collection service — Auditor's office, Title 17, ch. 4.

State collection of child support — dependent children, Title 40, ch. 5, part 2.

Deduction from wages for owed child support, Title 40, ch. 5, part 3.

Department of Social and Rehabilitation Services to monitor and enforce child support payments, 40-5-412.

Investigations by Department of Revenue, Title 53, ch. 2, part 5.

Part 7

Work Experience and Training Program (Repealed. Sec. 14, Ch. 550, L. 1989)

Part Compiler's Comments

Histories of Repealed Sections:

53-2-701. En. Sec. 1, Ch. 390, L. 1981.
53-2-702. En. Sec. 2, Ch. 390, L. 1981.
53-2-703. En. Sec. 3, Ch. 390, L. 1981.
53-2-704. En. Sec. 4, Ch. 390, L. 1981.
53-2-705. En. Sec. 5, Ch. 390, L. 1981.
53-2-706. En. Sec. 6, Ch. 390, L. 1981; amd. Sec. 10, Ch. 140, L. 1985.
53-2-707. En. Sec. 7, Ch. 390, L. 1981.
53-2-708. En. Sec. 8, Ch. 390, L. 1981.
53-2-709. En. Sec. 10, Ch. 390, L. 1981.

Part 8

State Assumption of County Public Assistance Programs

53-2-801. Purpose. The purpose of this part is to provide for the department of social and rehabilitation services to assume all responsibilities for public assistance programs and for the department of family services to assume all responsibilities for protective services for children and adults that, as of July 1, 1983, are provided by the counties pursuant to Titles 41 and 53. The assumption may become effective only at the option and with the express consent of each individual county requesting state assumption.

History: En. Sec. 1, Ch. 651, L. 1983; amd. Sec. 79, Ch. 609, L. 1987.

53-2-802. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "County department" means the county department of public welfare provided for in part 3 of this chapter.

(2) "Mill levy equivalent" means the prior year's expenditure divided by the value of 1 mill.

(3) "Needy person" is one who is eligible for public assistance under the laws of this state.

(4) "Protective services" means services to children and adults to be provided by the department of family services as permitted by Titles 41 and 53.

(5) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county department, regardless of the original source of assistance.

(6) "State assumption" means the transfer to the department of social and rehabilitation services and the department of family services for the county by the board of county commissioners of all powers and duties, including staff personnel as provided in 53-2-301 through 53-2-306 and public assistance and protective services, respectively, provided by the county department pursuant to Titles 41 and 53, except as otherwise specifically provided in this part.

History: En. Sec. 2, Ch. 651, L. 1983; amd. Sec. 23, Ch. 670, L. 1985; amd. Sec. 80, Ch. 609, L. 1987.

53-2-803. Authority to adopt rules. (1) The department of social and rehabilitation services and the department of family services may adopt rules necessary to carry out the purposes of this part, including implementing transfer of the county programs to each department, respectively.

(2) The department of social and rehabilitation services may adopt rules:

(a) to determine the amount, scope, and duration of general relief, which may not exceed those services and amounts payable under the department of social and rehabilitation services' programs of medicaid and aid to families with dependent children as necessary to carry out the purposes of this part; and

(b) establishing a system of penalties and sanctions applicable to providers of health-related services to state-assumed counties in accordance with 53-6-111(2) through (5).

History: En. Sec. 6, Ch. 651, L. 1983; amd. Sec. 1, Ch. 370, L. 1985; amd. Sec. 81, Ch. 609, L. 1987.

Cross-References

Adoption of rules, Title 2, ch. 4, part 3.

53-2-804 through 53-2-810 reserved.

53-2-811. Transfer of county public assistance and protective services to state departments. (1) All authority granted to the board of county commissioners to establish and operate a public assistance program and provide protective services for children and adults pursuant to Titles 41 and 53 may be transferred to the department of social and rehabilitation services and the department of family services, respectively, except that the county attorney shall continue to provide legal assistance and representation for the purposes of adult and child protective services without charge and all debts and obligations incurred prior to the effective date of state assumption continue as the responsibility of the county.

(2) The board of county commissioners, after public hearing, may by resolution or ordinance transfer to the department of social and rehabilitation services and the department of family services all powers and duties for public assistance and protective services for children and adults, respectively, including the selection, supervision, and termination of staff personnel associated with the performance of these activities. Upon the effective date of such transfer, the department of social and rehabilitation services and the department of family services shall assume all powers and duties related to public assistance and protective services, respectively, and accorded by law to the county welfare department. If the notice required in subsection (3) is given, the transfer is effective at the start of the next state fiscal year.

(3) Counties opting for state assumption shall notify the department of social and rehabilitation services and the department of family services at least 90 days prior to the start of the state fiscal year unless the time period is waived in whole or in part by the director of each department.

(4) Counties opting for state assumption shall permit the department of social and rehabilitation services and the department of family services to use the same facilities currently occupied by the county department or substantially equal facilities, with fair rental value for such facilities to be paid by each department. Counties opting for state assumption shall transfer to the appropriate department all materials, equipment, and supplies used in the operation of the county department and which were paid for in whole or in part with federal or state funds.

History: En. Sec. 3, Ch. 651, L. 1983; amd. Sec. 24, Ch. 670, L. 1985; amd. Sec. 82, Ch. 609, L. 1987.

Cross-References

State fiscal year to begin July 1, 17-2-110.

Duty of County Attorney — administration of public assistance, 53-2-303.

53-2-812. State assumption — permanent transfer to state — exceptions. (1) A county opting for state assumption does so on a complete and permanent basis, unless the county requests to retain or reassume responsibility for medical assistance or monetary payments to needy persons as provided in Title 53, chapter 3, pursuant to the adoption of a resolution or ordinance as provided in 53-2-811(2) and notice to the department of social and rehabilitation services as provided in 53-2-811(3). Under such a retention or reassumption, staff personnel continue under the supervision and control of the department of social and rehabilitation services but the department may contract with the counties for the operation of programs provided in Title 53, chapter 3. A county may not retain or reassume assistance programs partially funded by the federal government.

(2) A county transferring all duties and responsibilities to the state may reassume limited responsibility for medical assistance or monetary payments to needy persons as provided in subsection (1) but may not thereafter request full state assumption. A county initially requesting limited state assumption may not thereafter request full state assumption. A county opting for limited or full state assumption does so on a permanent basis, except as provided in this section.

History: En. Sec. 4, Ch. 651, L. 1983; amd. Sec. 83, Ch. 609, L. 1987.

53-2-813. Mill levy for counties transferring public assistance and protective services. (1) For the purpose of this part, 12 mills must be levied annually in those counties opting for state assumption.

(2) For a county electing state assumption before July 1, 1986, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury for the purpose of paying the expenses of the department of social and rehabilitation services. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department.

(3) For a county electing state assumption on or after July 1, 1986, the proceeds of the mill levy established in subsection (1) must be deposited in the state special revenue fund in the state treasury to the credit of the department of social and rehabilitation services. The general fund authority of the department of social and rehabilitation services shall be reduced and the general fund authority of the department of family services shall be increased by an amount equal to the county's expenditures for child and adult protective services in the fiscal year immediately preceding state assumption. The mill levy may not exceed 12 mills, notwithstanding actual expenditures made by the department of social and rehabilitation services and the department of family services.

(4) For a county retaining or reassuming operational responsibility for medical assistance or monetary payments to needy persons as provided in 53-2-812, the levy provided in subsection (1) must be reduced by the mill levy equivalent expended by that county or the department for such purposes in the fiscal year immediately preceding the option to retain or reassume such responsibility.

History: En. Sec. 7, Ch. 651, L. 1983; amd. Sec. 48, Ch. 281, L. 1983; amd. Sec. 110, Ch. 370, L. 1987; amd. Sec. 84, Ch. 609, L. 1987.

Cross-References

Maximum county poor fund levy, 53-2-321.

53-2-814 through 53-2-820 reserved.

53-2-821. Creation of advisory councils. (1) The department of social and rehabilitation services may establish one or more advisory councils to advise the department on policies relating to public assistance. The director of the department shall appoint members of the advisory council for a term set by him, and they may be dismissed at his discretion.

(2) Upon request of the governing body of a county having opted for state assumption, the department of social and rehabilitation services shall establish a county advisory council for the county. The advisory council shall consist of the board of county commissioners of the county or, if the county governing body consists of greater than three members, three members of the governing body chosen by the governing body. The department may appoint two other members to the advisory council as provided in subsection (1).

(3) No compensation or expenses may be paid advisory council members for their service on the advisory council. The requirements of 2-15-122 do not apply to an advisory council appointed pursuant to this section.

History: En. Sec. 5, Ch. 651, L. 1983; amd. Sec. 85, Ch. 609, L. 1987.

53-2-822. Workfare program required. The department of social and rehabilitation services shall establish a workfare program as provided in 53-3-304. The department of social and rehabilitation services may contract with the county, a municipality, or state agency to operate workfare projects for recipients of general relief.

History: En. Sec. 8, Ch. 651, L. 1983; amd. Sec. 86, Ch. 609, L. 1987; amd. Sec. 1, Ch. 451, L. 1989.

Parts 9 and 10 reserved

Part 11

Coordination of Job Training and Employment Programs

53-2-1101. Legislative findings. The legislature finds and declares that:

(1) many economically disadvantaged persons are unable to take their place in the economic mainstream of society because they lack the skills and training needed to obtain productive employment or to avoid long-term dependency on public assistance programs;

(2) existing state and federal employment and training programs, including the work incentive program, the work programs provided for in 53-3-304, and the programs administered under Title II-A of the Job Training Partner-

ship Act, have proved to be a multiple, uncoordinated response to the needs of the economically disadvantaged; and

(3) a successful job training program will require a comprehensive, integrated range of nonduplicative employment and training services for economically disadvantaged persons that will result in economic self-sufficiency through placement of economically disadvantaged persons in long-term, sustainable employment.

History: En. Sec. 1, Ch. 694, L. 1989.

53-2-1102. Legislative intent. Consistent with the findings in 53-2-1101, it is the intent of the legislature to:

(1) establish and promote a system of employment and training programs responsive to the needs of economically disadvantaged persons;

(2) maximize resources by coordinating state employment and training programs under Title II-A of the Job Training Partnership Act with state work programs for public assistance recipients and other programs designed to prepare economically disadvantaged persons for employment; and

(3) assure cost-effective delivery of employment and training services to those most in need by requiring that programs under Title II-A of the Job Training Partnership Act be based on performance and by mandating legislative review of such programs.

History: En. Sec. 2, Ch. 694, L. 1989.

53-2-1103. Definitions. For the purposes of this part, unless the context requires otherwise, the following definitions apply:

(1) "Economically disadvantaged person" has the same meaning as provided in section 4 of the Job Training Partnership Act (29 U.S.C. 1503).

(2) "Job Training Partnership Act" means the federal Job Training Partnership Act of 1982, Public Law 97-300 (29 U.S.C. 1501, et seq.), as amended.

(3) "Job training plan" means the plan for providing services and training in a service delivery area, as required in 53-2-1107.

(4) "Program" means the program created by 53-2-1104 to implement the provisions of Title II-A of the Job Training Partnership Act.

(5) "Program year" means the fiscal year beginning on July 1 of the year for which an appropriation is made for the program established under this part, as provided in section 161 of the Job Training Partnership Act (29 U.S.C. 1571).

(6) "Public assistance program" means the state program of general relief assistance or aid to families with dependent children.

(7) "Service delivery area" means an area designated as provided in section 101 of the Job Training Partnership Act (29 U.S.C. 1511).

History: En. Sec. 3, Ch. 694, L. 1989.

53-2-1104. Establishment of program. (1) There is a program to implement the provisions of Title II-A of the Job Training Partnership Act (29 U.S.C. 1601, et seq.). Except as provided in section 203 of the Job Training Partnership Act (29 U.S.C. 1603), the program must provide employment and training services to economically disadvantaged persons who are eligible to participate in the program.

(2) The program must be administered in accordance with a job training plan that meets the requirements of 53-2-1107 and 53-2-1108 and sections 103 through 105 of the Job Training Partnership Act (29 U.S.C. 1513 through 1515).

History: En. Sec. 4, Ch. 694, L. 1989.

53-2-1105. State job training coordinating council. (1) There is a state job training coordinating council. Members of the council must be appointed by the governor as required under section 122 of the Job Training Partnership Act (29 U.S.C. 1532).

(2) The state job training coordinating council shall perform the functions described in section 122 of the Job Training Partnership Act (29 U.S.C. 1532). The council shall also:

(a) recommend to the governor a statement of specific, measurable goals and objectives for employment and training services that must serve as guidelines for each private industry council in the development of a job training plan;

(b) recommend to the governor criteria for the coordination of employment and training programs as required under 53-2-1109; and

(c) review plans of all governmental agencies providing employment and training services and provide comments and recommendations to the governor, the state legislature, state agencies, and appropriate federal agencies concerning the relevancy and effectiveness of employment and training services provided in Montana.

History: En. Sec. 5, Ch. 694, L. 1989.

53-2-1106. Private industry councils. (1) There is a private industry council in each service delivery area of the state. Each council must be established as required in section 102 of the Job Training Partnership Act (29 U.S.C. 1512).

(2) Each private industry council shall carry out the duties and responsibilities provided in 53-2-1107 and section 103 of the Job Training Partnership Act (29 U.S.C. 1513).

History: En. Sec. 6, Ch. 694, L. 1989.

53-2-1107. Job training plan — requirements. (1) Each private industry council shall prepare for the service delivery area a job training plan that has been prepared in accordance with this part and sections 103 through 105 of the Job Training Partnership Act (29 U.S.C. 1513 through 1515).

(2) Each job training plan must include:

(a) the council's priorities for services and groups to be served within the service delivery area;

(b) procedures to be used in identifying and selecting program participants and in determining and verifying their eligibility;

(c) the type of services and training to be provided, including the estimated cost per participant;

(d) criteria for evaluating the content and quality of services and training;

(e) performance standards as required under 53-2-1108;

(f) procedures for selecting service providers as required under section 107 of the Job Training Partnership Act (29 U.S.C. 1517);

(g) a plan for the coordination of services and training with other programs as required in 53-2-1109;

(h) a procedure for preparing and submitting to the governor and, as provided in 5-11-210 if practical, the legislature an annual report that describes the activities conducted in the service delivery area during the program year and the extent to which activities exceeded or failed to meet the performance standards adopted in the job training plan; and

(i) all other information required under section 104 of the Job Training Partnership Act (29 U.S.C. 1514).

History: En. Sec. 7, Ch. 694, L. 1989; amd. Sec. 38, Ch. 112, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (2)(h) inserted "as provided in 5-11-210 if practical". Amendment effective March 20, 1991.

53-2-1108. Performance standards. Each job training plan must contain performance standards to measure the effectiveness and operation of the program in the service delivery area. These standards must include a measure of the extent to which programs under Title II-A of the Job Training Partnership Act increase the employment and earnings of public assistance recipients and therefore reduce expenditures for public assistance programs.

History: En. Sec. 8, Ch. 694, L. 1989.

53-2-1109. Coordination of services. The state job training coordinating council shall identify, in coordination with the appropriate state and local agencies, the employment, training, and vocational education needs throughout the state and assess the extent to which employment and training, vocational education, rehabilitation services, public assistance, economic development, and other federal, state, and local programs and services represent a consistent, integrated, and coordinated approach to meeting such needs. In carrying out this coordinating function, the council shall consider state policy set forth in 2-15-101 to eliminate overlapping and duplication of services within state government and in accordance with the provisions of section 121 of the Job Training Partnership Act (29 U.S.C. 1531) and other employment and training programs, including:

(1) programs operated under the federal Family Support Act of 1988; and

(2) programs and services of public assistance agencies, including the programs established in 53-3-304.

History: En. Sec. 9, Ch. 694, L. 1989.

53-2-1110. Review of job training plans. At least 120 days before the beginning of the first of the 2 program years covered by the job training plan, the governor shall submit the proposed job training plan for review and comment to an appropriate standing committee of each house of the legislature, as required by 29 U.S.C. 1515, or, if the legislature is not in session, to an appropriate interim committee designated by the speaker of the house of representatives and the president of the senate.

History: En. Sec. 10, Ch. 694, L. 1989.

CHAPTER 3

GENERAL RELIEF

Part 1 — General Provisions

53-3-101. Repealed.
53-3-102. Repealed.
53-3-103. Renumbered 53-3-315 by Code Commissioner, 1985.
53-3-104 through 53-3-107. Repealed.
53-3-108. Repealed.
53-3-109. Definitions.
53-3-110. Burial of deceased indigent.
53-3-111. Confidentiality.
53-3-112. Fraud and recovery of overpayments.
53-3-113. Contested case hearing.
53-3-114. Department to adopt rules.
53-3-115 through 53-3-120 reserved.
53-3-121. Legislative findings.
53-3-122. Legislative policy and intent.

Part 2 — Eligibility and Application for General Relief

53-3-201. Residency requirements.
53-3-202. Repealed.
53-3-203. Repealed.
53-3-204. Repealed.
53-3-205. Eligibility for general relief.
53-3-206. Eligibility for general relief medical assistance.
53-3-207. Application for other state and federal programs — interim relief — subrogation of department to receipt of federal payments.
53-3-208. Application.
53-3-209. Period of eligibility.
53-3-210. Legal assistance contracts.
53-3-211. Ineligibility due to voluntary termination of employment.
53-3-212. Ineligibility because of discharge due to misconduct.
53-3-213 and 53-3-214 reserved.
53-3-215. Eligibility classifications — duration of assistance.

Part 3 — Conditions and Form of Assistance Liability for Assistance

53-3-301. Repealed.
53-3-302. Repealed.
53-3-303. Conditions of eligibility.
53-3-304. Power to require employable recipients to participate in job search, training, and workfare programs.
53-3-305. Effect of refusal to participate in mandatory programs.
53-3-306. Repealed.
53-3-307. County medical assistance not to be paid from state funds — exception.
53-3-308. Responsibility for general relief.
53-3-309. Form of relief.
53-3-310. Scope of general relief medical assistance — limitations.
53-3-311. Amount of general relief for basic necessities.
53-3-312. Terminated.
53-3-313. Selection of medical providers — conditions of participation.
53-3-314. County of financial responsibility.
53-3-315. Repealed.
53-3-316 and 53-3-317 reserved.

53-3-318. Managed care.
53-3-319 and 53-3-320 reserved.
53-3-321. Services for recipients in need of special assistance.
53-3-322. Payment after performance.
53-3-323. Limitation of services.
53-3-324. Employability plan.
53-3-325. Transition-to-work allowance.
53-3-326. Transportation assistance.
53-3-327. Performance standards — monitoring and evaluation of program.
53-3-328. Employability determination — reassessment of additional eligibility.

Chapter Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

State general relief assistance, Title 53, ch. 2, part 8.

Aid to Families With Dependent Children, Title 53, ch. 4, part 2.

Medical assistance — medicaid, Title 53, ch. 6, part 1.

Part 1

General Provisions

53-3-101. Repealed. Sec. 28, Ch. 670, L. 1985.

History: (1), (3)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; (2)En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; Sec. 71-302, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-302.2(5).

53-3-102. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 1, Part 2, Ch. 82, L. 1937; R.C.M. 1947, 71-301; amd. Sec. 2, Ch. 199, L. 1979.

53-3-103. Renumbered 53-3-315 by Code Commissioner, 1985.

53-3-104 through 53-3-107. Repealed. Sec. 28, Ch. 670, L. 1985.

Compiler's Comments

Histories of Repealed Sections:

53-3-104. En. Sec. 7, Part 2, Ch. 82, L. 1937; amd. Sec. 6, Ch. 117, L. 1941; amd. Sec. 10, Ch. 199, L. 1951; amd. Sec. 17, Ch. 212, L. 1965; R.C.M. 1947, 71-309.

53-3-105. En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965; amd. Sec. 29, Ch. 121, L. 1974; amd. Sec. 2, Ch. 225, L. 1974; amd. Sec. 1, Ch. 375, L. 1975; amd. Sec. 30, Ch. 37, L. 1977; amd. Sec. 3, Ch. 379, L. 1977; R.C.M. 1947, 71-308(3).

53-3-106. En. Sec. 3, Part 2, Ch. 82, L. 1937; amd. Sec. 27, Ch. 37, L. 1977; R.C.M. 1947, 71-305.

53-3-107. En. Sec. 4, Part 2, Ch. 82, L. 1937; amd. Sec. 8, Ch. 199, L. 1951; amd. Sec. 27, Ch. 121, L. 1974; amd. Sec. 28, Ch. 37, L. 1977; R.C.M. 1947, 71-306.

53-3-108. Repealed. Sec. 13, Ch. 580, L. 1989.

History: En. Sec. 1, Ch. 670, L. 1985; amd. Sec. 1, Ch. 10, Sp. L. June 1986; amd. Sec. 2, Ch. 451, L. 1989.

53-3-109. Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Acute medical need" means an illness, injury, or other serious medical condition that:

(a) demands urgent medical attention; and

(b) is expected to last less than 12 months if treated.

(2) "Basic necessities" means food, shelter, utilities, and personal needs.

(3) "Children" means minor and adult children who reside in the same household with their parents. The term includes both adoptive and natural children.

(4) "Chronic illness" or "chronically ill" means the condition of a person who is diagnosed as having an illness, injury, or physical or mental impairment that:

(a) is expected to last for a continuous period of at least 12 months; and

(b) would be considered a disability under 42 U.S.C. 1382(c) if evaluated under criteria used to determine eligibility for the federal supplemental security income program.

(5) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(6) "Employable" means the condition of a person who is not unemployable, as determined by a vocational specialist. A person who is employable is transitionally needy and is not eligible for general relief for basic necessities except as provided in 53-3-215.

(7) "General relief" or "general relief assistance" means a program of public assistance for basic necessities and medical needs for those persons determined to be eligible for such assistance.

(8) "Household" means:

(a) a collective body of persons consisting of spouses or parents and their children who reside together in the same residence; or

(b) all other persons who by choice or necessity are mutually dependent upon each other for basic necessities and who reside in the same residence.

(9) "Income" means the value of all property of any nature, earned, unearned, or in-kind, including benefits, that is reasonably certain to be received or is actually received during the month by members of a household.

(10) "Lump-sum income" means a nonrecurring source of income received in a single payment by a household during any eligibility period, including but not limited to proceeds from a lawsuit, insurance settlement, inheritance, lump-sum retirement, veterans' or unemployment benefits; benefits received under the federal Social Security Act; prizes; and tax refunds.

(11) "Presumptive income" means the amount of financial assistance that a person would have received under the aid to families with dependent children program, as provided for in Title 53, chapter 4, part 2, if the person had not been determined ineligible due to receipt of lump-sum income, overpayment, fraud, or failure or refusal to comply with requirements for continued participation in the program.

(12) "Resource" means all real and personal property retained after the calendar month of its receipt and which the household or a member of the household has a legal right to sell or liquidate.

(13) "Secure facility" means any facility in which a person may be lawfully held against his will by federal, state, or local authorities.

(14) "Serious barrier to employment" means a limitation in obtaining employment, as determined by a vocational specialist, that results from:

(a) a lack of work skills, experience, or training necessary to secure employment;

(b) the failure to attain a high school education or its equivalent; or

(c) illiteracy.

(15) "Serious medical condition" means a mental or physical condition that causes a serious health risk to a person and for which treatment is medically necessary. Diagnosis and determination of necessary treatment must be made by a licensed medical practitioner, and the department may confirm the diagnosis through an expert medical review. Necessary treatment includes essential medical care and other services that the department determines, by rule, to be medically necessary. A serious medical condition is limited to chronic illness, an acute medical need, or a medical condition that requires services in order for a person to obtain or retain employment.

(16) (a) "Unemployable" means the condition of a person who:

(i) is at least 55 years of age and has a limited ability to obtain or retain suitable employment because of advanced age, as determined by a vocational specialist;

(ii) has a serious physical, emotional, or mental handicap that is medically certified and that prevents him from being employed in any substantial, gainful employment, as determined by a vocational specialist; or

(iii) suffers from a permanent or temporary illness, injury, or incapacity that is medically certified and that prevents the person from working in any substantial, gainful employment, as determined by a vocational specialist.

(b) A person who is unemployable is chronically needy and must be provided general relief as provided in 53-3-215.

(17) "Vocational specialist" means an employment counselor or other experienced personnel who are qualified to evaluate a recipient's ability to work in substantial, gainful employment.

History: En. Sec. 2, Ch. 670, L. 1985; amd. Sec. 2, Ch. 10, Sp. L. June 1986; amd. Sec. 3, Ch. 451, L. 1989; amd. Sec. 3, Ch. 580, L. 1989; amd. Sec. 1, Ch. 442, L. 1991; amd. Sec. 1, Ch. 578, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 442 inserted definitions of acute medical need and chronic illness; and in definition of serious medical condition, near beginning of first sentence after "physical condition", deleted "including pregnancy", near beginning of third sentence, after "includes", substituted "essential medical care and other services that the department determines, by rule" for "prenatal care and such other elective treatments as determined by department rule", and inserted fourth sentence concerning limits on condition constituting a serious medical condition. Amendment effective July 1, 1991.

Chapter 578 in definitions of employable, serious barrier to employment, and unemployable, in three places, inserted "as determined by a vocational specialist"; in definition of unemployable, in (a)(ii) and (a)(iii), inserted "that is medically certified and"; and inserted definition of vocational specialist. Amendment effective July 1, 1991.

53-3-110. Burial of deceased indigent. (1) In a county without state-assumed welfare services, the county welfare board shall provide for the burial of a deceased indigent.

(2) In a county with state-assumed welfare services, the department shall provide for the burial of a deceased indigent.

History: En. Sec. 16, Ch. 670, L. 1985.

53-3-111. Confidentiality. (1) Any personal information provided to or obtained by the county welfare department or the department for the purposes of this chapter is confidential.

(2) Disclosure of confidential information concerning applicants for general relief is restricted to purposes directly connected with the administration of programs administered by the department except as otherwise provided in this section.

(3) Confidential information may be released upon written consent of the applicant.

(4) Confidential information concerning an applicant may be released without prior consent if an emergency situation necessitates the release. The applicant must be informed of such release as soon as practicable.

(5) Confidential information may be released without notice or consent for the purpose of fraud investigation, collection of child support, and third-party medical recovery.

(6) Confidential information may be released if so directed by a court order.

History: En. Sec. 17, Ch. 670, L. 1985.

Cross-References

Right to know, Art II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont Const.

53-3-112. Fraud and recovery of overpayments. (1) The department shall deny general relief for a reasonable period of time to any household determined to have received any assistance by means of fraud.

(2) The department or its agent may recover or offset any amounts of general relief made available to a household which, because of fraud or mistake, are above the amounts that should have been provided.

History: En. Sec. 9, Ch. 670, L. 1985.

Cross-References

Fraud, 28-2-404 through 28-2-406.

False claims to public agencies, 45-7-210.

53-3-113. Contested case hearing. (1) Except as provided in subsection (2), a hearing must be held on request of any person who is dissatisfied with:

(a) an action taken on an application;

(b) an eligibility determination; or

(c) the amount or condition of payment.

(2) A hearing need not be granted if either state or federal law requires automatic grant adjustments for classes of persons unless the reason for an individual appeal is incorrect grant computation.

(3) The applicant or recipient must be informed of the right to request a hearing at the time any adverse action affects his eligibility.

(4) A hearing must be requested within 90 calendar days from the date of notice of adverse action. An applicant is considered to have been given notice on the date the notice is mailed or personally served.

(5) The hearing must be held in:

(a) the person's county of residence;
(b) the county where application is made if residency is unestablished; or
(c) Lewis and Clark County if a real party in interest requests a hearing for an applicant in any county with state-assumed welfare services.

(6) When a real party in interest requests a hearing for an applicant, venue for judicial review of the final administrative action is Lewis and Clark County if financial responsibility is alleged to be with a state-assumed county welfare program.

History: En. Sec. 18, Ch. 670, L. 1985; amd. Sec. 4, Ch. 451, L. 1989.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

53-3-114. Department to adopt rules. The department shall adopt such rules as are necessary to implement this chapter. Rules adopted may include those necessary for application, eligibility, residency, fraud, recovery of overpayments; the form, amount, scope, and duration of relief; confidentiality; burial of deceased indigents; and definition of terms. The department may not adopt rules to govern the amounts of relief to be provided in counties where the department has not assumed responsibility for the direct administration of welfare services.

History: En. Sec. 19, Ch. 670, L. 1985.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-3-115 through 53-3-120 reserved.

53-3-121. Legislative findings. The legislature finds that:

(1) Article XII, section 3, of the Montana constitution grants the legislature authority to determine the public policy governing the provision of public assistance;

(2) public policy requires that certain persons who are in need should be provided with assistance through programs of general relief;

(3) general relief assistance, along with other assistance programs, should be available to provide:

(a) basic necessities that allow minimum subsistence compatible with decency and health; and

(b) financial assistance for medical services necessary for the treatment of a person's serious medical condition. However, general relief medical assistance should not be available to nonindigent persons who have catastrophic medical expenses.

(4) general relief assistance should not be available to those persons who have adequate income or resources to support themselves, nor should general relief assistance be provided in duplication of services and benefits available through other federal or state assistance programs;

(5) the legislature, in order to allocate scarce welfare resources to those most in need, may establish a reasonable classification that distinguishes between persons who are chronically in need of assistance and persons who are transitionally needy; and

(6) as the basis for the classification of recipients, it is reasonable to conclude that:

(a) some persons are in need of assistance because their age or physical, emotional, or mental condition renders them incapable of substantial, gainful employment. Such persons are chronically needy and should be entitled to general relief assistance for the duration of their need.

(b) some persons are in need of assistance because they are unemployed or lack the skills, training, or experience to become employed. Such persons should be considered transitionally needy and should be provided only temporary, interim assistance and state help in obtaining gainful employment. In addition, because some persons who are transitionally needy suffer from serious personal problems or barriers to employment, the state should provide assistance to enable these persons to overcome the problems that impair their employment potential.

History: En. Sec. 1, Ch. 580, L. 1989.

53-3-122. Legislative policy and intent. Consistent with the findings in 53-3-121, the legislature intends that:

(1) general relief assistance should be provided to those in need, but only to the extent of such need;

(2) unemployable persons, because they are chronically in need, should be afforded general relief for as long as they have need for such assistance;

(3) employable persons, being transitionally needy, should be granted 4 months of general relief for basic necessities, which relief will be available only if such persons participate in a job search, training, and work program as required by 53-3-304; and

(4) in recognition that not all employable persons are ready to participate in the work force and that the state has a duty to protect the welfare of children, nonmedical general relief should be provided for 6 months to persons who meet the eligibility criteria provided in 53-3-215.

History: En. Sec. 2, Ch. 580, L. 1989.

Part 2

Eligibility and Application for General Relief

53-3-201. Residency requirements. (1) Any person otherwise qualified who makes his home in Montana with the intent to become a resident shall be eligible for general relief.

(2) If a person is absent from the state voluntarily, he is ineligible for general relief in Montana.

(3) Aliens found to be illegally within the United States are not eligible for relief from state funds.

(4) Nonresidents or interstate transients may receive temporary relief from county funds in cases of extreme necessity and destitution until they are returned at state expense to their state of residence or origin.

History: En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; R.C.M. 1947, 71-302.2(part).

Cross-References
Residence — rules for determining, 1-1-215.

53-3-202. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 10, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 199, L. 1951; R.C.M. 1947, 71-312.

53-3-203. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 11, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 199, L. 1951; R.C.M. 1947, 71-313.

53-3-204. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Subd. (b), Sec. 2, Part 2, Ch. 82, L. 1937; amd. Sec. 12, Ch. 129, L. 1939; amd. Sec. 26, Ch. 37, L. 1977; R.C.M. 1947, 71-303.

53-3-205. Eligibility for general relief. (1) Except as otherwise provided under this chapter, a person may receive general relief for basic necessities if the household is determined to be eligible under the provisions of this section.

(2) A person is eligible for general relief assistance if his total household income, including presumptive income but exclusive of the earned income disregard provided for in subsection (3), does not exceed the amount established by the department by rule. The department shall establish the amount, taking into account the size of the household and the estimated number of eligible households. The amount must be based on a percentage of the federal poverty index. The percentage is established in the state general appropriations act.

(3) For 4 consecutive months, the first $30 plus one-third of the remainder of the total income earned each month by each household member who is a current recipient must be disregarded in determining a household's eligibility for general relief assistance. If the total household income, exclusive of this amount, exceeds the amount established by the department under subsection (2), the household is not eligible for general relief assistance. A current recipient is one who has been receiving general relief assistance for at least 1 complete calendar month.

(4) (a) If a person's household income exceeds the monthly income standard provided in subsection (2) because of receipt of lump-sum income, he is ineligible for general relief assistance for the full number of months, beginning with the month of receipt, derived by dividing the total of the lump-sum income and other income by the monthly income standard. Any income remaining from this calculation will be considered as income in the first month following the period of ineligibility.

(b) The period of ineligibility may be recalculated if the household size changes or if a portion of the lump-sum income was used to pay medical bills for a serious medical condition.

(c) Ineligibility due to the receipt of lump-sum income does not preclude eligibility for general relief medical assistance.

(5) All applicants for and recipients of general relief assistance who reside in the same residence are considered as one household.

(6) Eligibility for nonmedical general relief assistance must be determined prospectively, based on household income and other relevant circumstances reasonably certain to exist in the month in which assistance is to be provided. Once eligibility is determined, an individual must be paid benefits in accordance with the method provided for in 53-3-311.

(7) (a) Except as provided in subsection (7)(b), the equity value of all household resources must be considered available to meet the needs of the individual applying for general relief.

(b) The following resources of a household must be excluded from consideration of resources for eligibility purposes:

(i) the domicile of the household, including necessary appurtenant land not exceeding 10 acres;

(ii) a motor vehicle that has no more than $1,500 in equity value;

(iii) personal items, clothing, household furniture, appliances, and other essential household items, the total equity value of which does not exceed resource eligibility limits established by rule; and

(iv) tools of a trade that are essential to the current or future employment of a household member.

(8) A person who is committed or sentenced by legal process to a state institution or a secure facility or who is incarcerated in a secure facility pending resolution of legal process is not eligible for general relief.

(9) A person who resides for a period of 1 day or more in any state or federally operated institution or residence is not eligible for general relief for the period of that residency.

(10) For the purposes of an eligibility determination, an applicant for or recipient of general relief may be requested to produce all financial and other information concerning the household.

(11) Whenever practical, an eligibility determination must be made within 30 days of the date of application and the applicant must be notified in writing of the eligibility determination and the reasons for the determination.

History: En. Sec. 4, Ch. 670, L. 1985; amd. Sec. 3, Ch. 10, Sp. L. June 1986; amd. Sec. 1, Ch. 614, L. 1987; amd. Sec. 5, Ch. 451, L. 1989; amd. Sec. 5, Ch. 580, L. 1989; amd. Sec. 1, Ch. 585, L. 1989; amd. Secs. 1, 5, Ch. 603, L. 1989.

Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

53-3-206. Eligibility for general relief medical assistance. (1) In order to be eligible for general relief medical assistance, a person must have a serious medical condition and must:

(a) be chronically ill;

(b) have an acute medical need;

(c) be a child less than 18 years of age; or

(d) require medical services in order to obtain or retain employment.

(2) A person described in subsection (1)(d) is eligible for general relief medical assistance only if:

(a) the person is participating in a job search, training, and workfare program established under 53-3-304; or

(b) an assessment by the department has determined that medical services are necessary in order for the person to obtain or retain employment. The department may require that the assessment be part of an individual case plan developed and intended to lead to employment.

(3) Eligibility for general relief medical assistance must be determined as provided in 53-3-205 and this section. In order to receive payment for medical services, a person must apply for general relief medical assistance prior to the provision of medical services or within 90 days of the date the medical service is first provided. Eligibility is determined as of the date medical service is first provided.

(4) All persons who reside in the same residence and are either married to each other or are the parents or children of other persons living in the same residence are considered to be one household for purposes of determining general relief medical assistance.

(5) All individual or household resources must be used to offset medical obligations except those resources excluded in 53-3-205(7) or used to offset nonmedical general relief payments during the same period.

(6) A household is ineligible to receive general relief medical assistance if the household is ineligible for medicaid as a result of overpayment, fraud, or failure or refusal to comply with requirements for continued participation in the medicaid program.

(7) To determine eligibility for county general relief medical assistance, a county welfare board may promulgate rules to establish the circumstances under which persons are unable to pay for their medical aid and hospitalization. However, no household with an income exceeding 300% of the amount set forth in 53-3-205(2) is eligible for such medical assistance.

(8) In a county with state-assumed welfare services, a person is not eligible for medical services if the household in which he resides has an average monthly income after consideration of the earned income disregard provided for in 53-3-205(3), reasonably certain to be received in a 12-month period beginning with the month the medical service was provided, in excess of the amount established by the department by rule. The department shall establish the amount, taking into account the size of the household and the estimated number of eligible households. The amount must be 150% of the amount established in 53-3-205(2).

(9) Notwithstanding the other provisions of this section, in a county with state-assumed welfare services, a person whose eligibility for general relief assistance is terminated because of earned income from employment may continue to receive general relief medical assistance for 1 month, subject to the limitations in the scope of services provided in 53-3-310.

History: En. Sec. 5, Ch. 670, L. 1985; amd. Sec. 4, Ch. 10, Sp. L. June 1986; amd. Sec. 6, Ch. 451, L. 1989; amd. Sec. 6, Ch. 580, L. 1989; amd. Sec. 2, Ch. 585, L. 1989; amd. Sec. 2, Ch. 603, L. 1989; amd. Sec. 2, Ch. 442, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (1)(a) through (1)(d) concerning requirements in addition to serious medical condition needed for assistance eligibility; inserted (2) concerning employment or training requirements and a departmental assessment needed for assistance eligibility; in (3), at beginning of second sentence, inserted language concerning receiving payments for medical services and after "person" deleted "with a serious medical condition"; at end of (9), after "month", inserted clause providing for limitation of scope of services; and made minor changes in style. Amendment effective July 1, 1991.

Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

53-3-207. Application for other state and federal programs — interim relief — subrogation of department to receipt of federal payments. (1) General relief is available to a recipient to the extent such relief is not duplicative of resources or benefits reasonably available to the recipient.

(2) If other federal or state programs of assistance are reasonably available to meet the needs of a household, an applicant must apply for those programs before general relief may be provided. A household may be provided general relief after initial application for other programs of assistance. If denied such other assistance, the applicant must pursue available administrative appeals for those programs to the final administrative appeal level. If the applicant becomes eligible for other assistance covering the same period of time that interim general relief is provided, such interim relief must be repaid to the department or offset from lump sums or retroactive payments from other programs of assistance.

(3) To the extent necessary for repayment of interim general relief provided to an applicant, the department is subrogated to the right of an attorney to recover from the federal government the costs of providing the applicant legal assistance in obtaining eligibility for supplemental security income under Title XVI of the Social Security Act.

History: (1)En. Sec. 1, Ch. 138, L. 1985; (2)En. Sec. 8, Ch. 670, L. 1985; amd. Sec. 1, Ch. 456, L. 1987.

53-3-208. Application. (1) Application for general relief must be made in writing to a county welfare department or the department's local office of human services on forms provided for that purpose.

(2) A person applying in a county other than that of his residency must have his application referred to the county of his residency as soon as possible.

History: En. Sec. 12, Ch. 670, L. 1985.

53-3-209. Period of eligibility. (1) The period of eligibility for receipt of general relief for basic necessities is 1 month. Except as provided in subsection (3), a person may seek to establish eligibility for the succeeding month prior to the end of the current month of eligibility.

(2) Eligibility for general relief medical assistance is granted for a period of 1 month and terminates when the serious medical condition of the person has been treated. Except as provided in subsection (3), continued eligibility for general relief medical assistance may be established in any subsequent month.

(3) The period of eligibility for any type of general relief assistance terminates at any time the county welfare board or the department determines that the household:

(a) no longer meets the applicable eligibility requirements; or

(b) received general relief assistance by means of fraud or mistake.

History: En. Sec. 10, Ch. 670, L. 1985; amd. Sec. 5, Ch. 10, Sp. L. June 1986; amd. Sec. 7, Ch. 451, L. 1989; amd. Sec. 7, Ch. 580, L. 1989.

53-3-210. Legal assistance contracts. The department of social and rehabilitation services may contract with any agency, organization, or person to provide general relief recipients legal assistance in obtaining supplemental security income benefits from the federal government.

History: En. Sec. 2, Ch. 456, L. 1987.

53-3-211. Ineligibility due to voluntary termination of employment. (1) A person is not eligible to receive general relief assistance for a period of 3 months if he has voluntarily left employment without good cause connected to such employment.

(2) For purposes of subsection (1), a person has voluntarily left employment with good cause if he has left work because of:

(a) a compelling reason directly related to the job under circumstances that would cause a reasonably prudent person to leave his employment;

(b) work conditions that pose an undue risk of personal injury, illness, or harm;

(c) unlawful discrimination, harassment, or other mistreatment by the employer; or

(d) personal illness or injury and, after recovering from such illness or injury, he returns to his employer and finds no suitable work available.

History: En. Sec. 1, Ch. 563, L. 1989.

53-3-212. Ineligibility because of discharge due to misconduct. (1) A person is ineligible to receive general relief assistance for a period of 3 months if he has been discharged or suspended from employment for misconduct related to the individual's work or affecting his employment.

(2) For purposes of subsection (1), "misconduct" means:

(a) intentional, willful, or wanton disregard of the employer's interest or of the employee's duties and obligations to his employer;

(b) material breach of the employee's duty to his employer as found in:

(i) the employee's deliberate violation or disregard of standards of behavior that the employer has a right to expect of his employee; or

(ii) carelessness or negligence of such degree or recurrence as to manifest culpability, wrongful intent, or evil design or to show an intentional or substantial disregard of the employer's interest;

(c) dishonesty toward the employer, including acts such as deliberate falsification of company records, theft, deliberate deception, lying, and other statements or acts that demonstrate a willful or wanton disregard of the employer's interest;

(d) excessive, unexcused absences from work or repeated, unexcused tardiness by the employee;

(e) insubordination; or

(f) assault, threats of violence, provoking a fight, or stealing from a fellow employee if committed on the premises of the employer.

(3) The following do not constitute misconduct within the meaning of subsection (1):

(a) mere inefficiency or unsatisfactory conduct of the employee;

(b) inadvertence or ordinary negligence in isolated instances; or

(c) good faith errors in judgment or discretion.

History: En. Sec. 2, Ch. 563, L. 1989.

53-3-213 and 53-3-214 reserved.

53-3-215. Eligibility classifications — duration of assistance. (1) For purposes of eligibility, a recipient of general relief must be classified as either employable or unemployable.

(2) Unemployable persons may receive general relief for as long as they remain eligible.

(3) Except as provided in subsection (4), employable persons who are otherwise eligible may receive general relief for basic necessities for a period not to exceed 4 months in any 12-month period.

(4) An employable person may receive nonmedical general relief for a maximum of 6 months in any 12-month period if such person:

(a) has a serious barrier to employment and is willing to participate in a program to overcome that employment barrier;

(b) suffers from drug or alcohol dependency and, subject to available funding, is undergoing active treatment in an approved program; or

(c) is the head of a household that includes minor dependent children and is enrolled in a job search, training, and work program as required by 53-3-304.

(5) Assistance granted prior to January 1, 1990, may not be considered in determining eligibility.

History: En. Sec. 4, Ch. 580, L. 1989.

Part 3

Conditions and Form of Assistance
Liability for Assistance

53-3-301. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 12, Part 2, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1949; amd. Sec. 14, Ch. 199, L. 1951; amd. Sec. 32, Ch. 37, L. 1977; R.C.M. 1947, 71-314; amd. Sec. 1, Ch. 4, Sp. L. 1981; amd. Sec. 16, Ch. 651, L. 1983.

53-3-302. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part); amd. Sec. 2, Ch. 4, Sp. L. 1981.

53-3-303. Conditions of eligibility. (1) As a condition of eligibility for general relief assistance, an employable recipient must:

(a) register for employment with the department of labor and industry;

(b) maintain an active job registration file; and

(c) actively pursue and accept available employment within his or her capability.

(2) Refusal without good cause to comply with the requirements of subsection (1) will render the individual recipient, but not the rest of that

recipient's household, ineligible for general relief assistance for 3 months following the first refusal and for 6 months following any subsequent refusal.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part); amd. Sec. 1, Ch. 349, L. 1981; amd. Sec. 1, Ch. 579, L. 1989.

53-3-304. Power to require employable recipients to participate in job search, training, and workfare programs. (1) The department shall initiate, promote, and develop job search, training, and workfare programs that will provide employment, training, and work experience for persons receiving general relief assistance under the provisions of this chapter. These programs must be designed to:

(a) preserve and improve the work habits and skills of recipients for whom jobs are not otherwise immediately available; and

(b) provide training and work experience that will enable recipients to find regular, sustainable employment.

(2) For each county with state-assumed welfare services, the department shall institute job search, training, and workfare programs as provided for in subsection (1).

(3) Except as otherwise provided in this chapter, in a county with state-assumed welfare services, an employable recipient of general relief assistance shall enroll in a structured job search and training program at an employment office or other site designated by the department. The program may include the following elements:

(a) assessment and testing;

(b) an employability plan;

(c) a requirement that recipients participate for a minimum of 40 hours a week in a combination of activities, including workfare as provided in subsection (4), unless they are prevented with good cause from participating in such activities;

(d) remedial education or job skills training, if it is called for in the employability plan and if it provides for immediate referral to an appropriate Job Training Partnership Act program;

(e) a job readiness and job search program that may include:

(i) self-assessment and occupational testing;

(ii) instruction in completing applications, writing resumes, and preparing for interviews;

(iii) identification of and contact with potential employers;

(iv) participation in simulated job interviews; and

(v) intensive job search activity and prompt placements for recipients who are ready to enter the work force;

(f) a supervised effort to find employment;

(g) efforts to address barriers to employment;

(h) an expectation that recipients must be employed at the end of the program; and

(i) followup and monitoring of program performance.

(4) In addition to the training required in subsection (3), the county department of public welfare or the department of social and rehabilitation services may require a recipient to participate in a workfare program. The

purpose of the workfare program is to provide work experience and training for general relief recipients in specifically created work projects operated by a public agency or a private, nonprofit agency. A workfare program established under this section must provide that:

(a) a currently employed worker may not be displaced by any recipient (including partial displacement such as a reduction in the hours of nonovertime work, wages, or employment benefits);

(b) a recipient may not be given a work experience or training assignment if:

(i) the assignment would fill an established, unfilled vacancy that exists because an employee has been laid off; or

(ii) the employer has terminated the employment of any regular employee or otherwise reduced its work force with the intention of filling the vacancy with a general relief recipient;

(c) a recipient may not be required to participate in a workfare program if participation is determined to interfere with:

(i) participation in a job search or job training program; or

(ii) attendance in a secondary education program;

(d) the maximum number of hours that a recipient may be required to participate in a workfare program and job search and training programs may not exceed 40 hours in a week.

(5) The county department of public welfare or the department of social and rehabilitation services, as the case may be, shall provide coverage under the Workers' Compensation Act for those recipients of general relief participating in the workfare program and may enter into such agreements with the department of labor and industry as may be necessary to carry out the provisions of this section.

(6) Where a labor organization represents a substantial number of employees who are engaged in similar work or training in the area where it is proposed to assign the recipient to a workfare project, an opportunity must be provided for that organization to submit comments with respect to such proposal.

(7) A workfare program may not impair existing contracts for services or collective bargaining agreements, and a workfare program that would be inconsistent with the terms of a collective bargaining agreement may not be undertaken without the written concurrence of the labor organization and employer concerned.

(8) No program established under this section may include any political, partisan, or lobbying activities. The department shall deny funds to any program involved in such activities.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(part); amd. Sec. 17, Ch. 651, L. 1983; amd. Sec. 1, Ch. 10, Sp. L. March 1986; amd. Sec. 2, Ch. 614, L. 1987; amd. Sec. 8, Ch. 451, L. 1989; amd. Sec. 8, Ch. 580, L. 1989; amd. Sec. 64, Ch. 613, L. 1989; amd. Sec. 1, Ch. 701, L. 1989.

Cross-References

Prevailing wages — "Little Davis-Bacon Act", 18-2-401.

Minimum wage, Title 39, ch. 3, part 4.

State general relief assistance — state to establish workfare program, 53-2-822.

53-3-305. Effect of refusal to participate in mandatory programs. Any recipient of general relief who is subject to the provisions of 53-3-304 and 53-3-321 and who without good cause refuses to participate in a required program or to perform work assigned to him as therein provided shall lose eligibility for general relief for 3 months following the first refusal and for 6 months following any subsequent refusal.

History: En. Sec. 5, Part 2, Ch. 82, L. 1937; amd. Sec. 13, Ch. 129, L. 1939; amd. Sec. 1, Ch. 180, L. 1963; amd. Sec. 28, Ch. 121, L. 1974; amd. Sec. 1, Ch. 208, L. 1974; amd. Sec. 29, Ch. 37, L. 1977; R.C.M. 1947, 71-307(3); amd. Sec. 2, Ch. 10, Sp. L. March 1986; amd. Sec. 2, Ch. 579, L. 1989.

53-3-306. Repealed. Sec. 28, Ch. 670, L. 1985.

History: En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; R.C.M. 1947, 71-302.2(part); amd. Sec. 2, Ch. 450, L. 1979.

53-3-307. County medical assistance not to be paid from state funds — exception. (1) County general relief medical assistance under 53-3-206 shall not be entitled to be paid from state funds.

(2) Medical expenses arising from accidental injury to interstate transients shall be paid from county funds and reimbursed by the state upon submission of a proper claim.

History: En. 71-302.2 by Sec. 1, Ch. 225, L. 1974; amd. Sec. 25, Ch. 37, L. 1977; R.C.M. 1947, 71-302.2(part); amd. Sec. 26, Ch. 670, L. 1985.

53-3-308. Responsibility for general relief. (1) The county boards of public welfare and the department, in accordance with this chapter and other relevant statutes, are responsible for the provision of general relief as follows:

(a) Counties without state-assumed welfare services shall provide general relief consistent with their duties as specified in Title 53, chapter 2, parts 3 and 7, and this chapter.

(b) In counties with state-assumed welfare services, general relief must be provided by the department and must be consistent with its duties as specified in Title 53, chapter 2, part 8, and this chapter.

(2) In counties without state-assumed welfare services, general relief must be paid from the county poor fund as authorized in 53-2-321 through 53-2-323.

(3) In counties with state-assumed welfare services, general relief must be paid from and may not exceed money available through:

(a) a general appropriation for such purpose;

(b) county mill levies as provided for in 53-2-813; and

(c) federal or other assistance.

History: En. Sec. 3, Ch. 670, L. 1985; amd. Sec. 9, Ch. 580, L. 1989.

53-3-309. Form of relief. The choice as to the form or forms of relief provided is at the discretion of the county welfare department in counties without state-assumed welfare services or the department if the state has assumed responsibility for the welfare services in a county. The form of relief may include but is not limited to cash, checks, vouchers, lines of credit, in-kind goods and services, and food commodities.

History: En. Sec. 11, Ch. 670, L. 1985; amd. Sec. 9, Ch. 451, L. 1989.

53-3-310. Scope of general relief medical assistance — limitations. (1) General relief medical assistance is limited to those services medically necessary to treat a person's serious medical condition. Assistance may not exceed the scope or duration of similar services provided under the Montana medicaid program pursuant to Title 53, chapter 6, part 1, and rules adopted by the department to administer the program.

(2) General relief medical assistance in a county without state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts determined by the county welfare board.

(3) General relief medical assistance in counties with state-assumed welfare services must, within the limitations of subsection (1), be provided in amounts not to exceed payments under the medicaid program. Services must be limited to the least costly method of alleviating the serious medical condition.

(4) General relief medical assistance is limited to covered medical needs not met by other services or benefits available to the person. Available services or benefits include but are not limited to health and accident insurance, veterans' benefits, industrial accident benefits, medicare and medicaid benefits, and other liable third parties.

(5) A person who is chronically ill may receive general relief medical assistance for services limited to treatment of a serious medical condition related to chronic illness.

(6) A person who has an acute medical need but who is not chronically ill may receive general relief medical assistance but only for services necessary to treat a serious medical condition that requires immediate medical attention to alleviate a serious health risk.

(7) A child less than 18 years of age may receive the same scope and duration of services as provided under the Montana medicaid program provided for in Title 53, chapter 6.

(8) A person who requires medical services in order to obtain or retain employment may receive services similar to those provided under the Montana medicaid program but only for the duration of need.

(9) Except as provided in subsection (7), nothing in this chapter may be construed to require the same scope of medical services as provided under the Montana medicaid program.

History: En. Sec. 14, Ch. 670, L. 1985; amd. Sec. 3, Ch. 442, L. 1991.

Compiler's Comments

1991 Amendment: In (1), near beginning of first sentence after "services", substituted "medically" for "determined" and near beginning of second sentence, after "duration", inserted "of similar services"; inserted (5) concerning limitation of chronic illness assistance; inserted (6) concerning limitation of general relief medical assistance; inserted (7) concerning services for child less than 18 years of age; inserted (8) concerning services necessary for employment; inserted (9) concerning limitation of medical services under Medicaid; and made minor change in style. Amendment effective July 1, 1991.

Cross-References

Medical assistance — Medicaid, Title 53, ch. 6, part 1.

53-3-311. Amount of general relief for basic necessities. (1) In a county without state-assumed welfare services, the amounts of general relief for basic necessities must be determined and adopted at the discretion of the county welfare board.

(2) In a county with state-assumed welfare services, the amount of general relief for basic necessities available to an eligible household is the amount determined for the same size household pursuant to 53-3-205(2), less countable income and resources not excluded in 53-3-205(3) and (7).

(a) Countable income during the first 2 months of continuous eligibility is the income the household is likely to receive during the benefit month, less the amounts excluded in 53-3-205(2).

(b) Countable income in the third and all consecutive continuous months of eligibility is the income the household received in the second calendar month immediately preceding the benefit month less the amounts excluded in 53-3-205(2).

History: En. Sec. 15, Ch. 670, L. 1985; amd. Sec. 10, Ch. 451, L. 1989; amd. Sec. 3, Ch. 585, L. 1989; amd. Sec. 3, Ch. 603, L. 1989.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

Earnings and accumulations of married person, 40-2-205.

Necessity determined by standard of living, 40-2-210.

When parent liable for necessaries supplied to child, 40-6-215.

Minor cannot disaffirm contract for necessaries, 41-1-305.

53-3-312. Terminated. Sec. 30, Ch. 670, L. 1985.

History: En. Sec. 7, Ch. 670, L. 1985.

53-3-313. Selection of medical providers — conditions of participation. (1) In arranging for medical care for those unable to provide it for themselves, the county board of public welfare or the department may select a medical provider.

(2) As a condition of participation in the general relief medical program, a provider of medical services must accept as payment in full the amount paid by the state or county for such services.

(3) No provider of medical services may seek from a recipient any payment in addition to the amount paid by the state or county for such services.

History: En. Sec. 6, Ch. 670, L. 1985; amd. Sec. 12, Ch. 580, L. 1989.

Cross-References

Emergency health care services, Title 50, ch. 6.

53-3-314. County of financial responsibility. (1) The county responsible for benefits provided under this chapter is the county of residence of the person making application for assistance.

(2) Medical costs covered by general relief medical assistance are the financial responsibility of the treated person's county of residence. Institutionalization for medical services does not change such residency.

(3) General relief medical assistance for a transient is the responsibility of the county in which the nonresident's illness or injury requiring medical attention initially occurred.

History: En. Sec. 13, Ch. 670, L. 1985.

Cross-References

Residence — rules for determining, 1-1-215.

53-3-315. Repealed. Sec. 4, Ch. 482, L. 1989.

History: En. Sec. 6, Part 2, Ch. 82, L. 1937; amd. Sec. 15, Ch. 129, L. 1939; amd. Sec. 5, Ch. 117, L. 1941; amd. Sec. 1, Ch. 155, L. 1947; amd. Sec. 9, Ch. 199, L. 1951; amd. Sec. 1, Ch. 57, L. 1955; amd. Sec. 1, Ch. 86, L. 1957; amd. Sec. 16, Ch. 212, L. 1965; amd. Sec. 29, Ch. 121, L. 1974; amd. Sec. 2, Ch. 225, L. 1974; amd. Sec. 1, Ch. 375, L. 1975; amd. Sec. 30, Ch. 37, L. 1977; amd. Sec. 3, Ch. 379, L. 1977; R.C.M. 1947, 71-308(1), (2), (4), (5); amd. Sec. 4, Ch. 38, L. 1979; amd. Sec. 1, Ch. 707, L. 1979; amd. Sec. 1, Ch. 325, L. 1981; amd. Sec. 2, Ch. 535, L. 1985; amd. Sec. 25, Ch. 670, L. 1985; Sec. 53-3-103, MCA 1983; redes. 53-3-315 by Code Commissioner, 1985.

53-3-316 and 53-3-317 reserved.

53-3-318. Managed care. (1) The department, in its discretion, may develop managed-care systems for general relief medical assistance recipients.

(2) A managed-care system is a program organized to serve the medical needs of persons in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through primary physicians and other health care providers.

(3) The department may require recipients to participate in a managed-care system.

(4) Recipients who are required by the department to participate in a managed-care system shall participate as required in order to remain eligible for general relief medical assistance.

(5) The department may require the participation of recipients in managed-care systems based upon geographical, financial, social, medical, and other factors as the department may determine are relevant to the development and efficient management of managed-care systems.

History: En. Sec. 4, Ch. 442, L. 1991.

Compiler's Comments

Effective Date: Section 7, Ch. 442, L. 1991, provided that this section is effective July 1, 1991.

53-3-319 and 53-3-320 reserved.

53-3-321. Services for recipients in need of special assistance. (1) Unless otherwise exempted, in a county with state-assumed welfare services, a person who has a serious barrier to employment or who suffers from drug or alcohol dependency shall report to a job search, training, and workfare program for the purpose of receiving an assessment to determine whether the person is likely to benefit from counseling, therapy, or rehabilitation. The agency shall require that the person be enrolled in either:

(a) a job search, training, and workfare program established under 53-3-304, except that he need not participate in the job search program under 53-3-304(3)(e) until the agency determines that he is ready to participate in the work force; or

(b) a program designed specifically to help that person overcome problems that impair the potential for employment.

(2) Subject to available funding, a program provided for in subsection (1)(b) may include the following elements:

(a) assessment and testing;

(b) an employability plan;

(c) remedial education or job skills training, if required by the employability plan; and

(d) services, including counseling, therapy, and rehabilitation, to address serious barriers to employment and drug or alcohol dependency.

(3) In order to encourage rehabilitation, the department may restrict services to persons suffering from drug or alcohol dependency to one intervention through the provision of services described in subsections (2)(a) through (2)(d). The department may continue to provide up to 3 months of additional benefits for those persons participating in a drug or alcohol rehabilitation program. This 3-month extension extends those limitations in 53-3-215.

History: En. Sec. 10, Ch. 580, L. 1989; amd. Sec. 16, Ch. 580, L. 1989; amd. Sec. 12, Ch. 701, L. 1989; amd. Sec. 45, Ch. 16, L. 1991.

Compiler's Comments

1991 Amendment: In (1) and (1)(a) substituted "workfare program" for "work program".

53-3-322. Payment after performance. (1) The department may by rule withhold general relief assistance or limit payments to shelter or personal needs until all employable members of the household have completed 2 full weeks in a structured job search, training, or workfare program as required in 53-3-304.

(2) A person is ineligible for assistance under subsection (1) if:

(a) the person fails to cooperate with the department in its investigation of eligibility; or

(b) the department's investigation during the 2-week period described in subsection (1) discloses that the person is ineligible to receive assistance.

History: En. Sec. 2, Ch. 701, L. 1989.

53-3-323. Limitation of services. (1) The department may limit the scope and availability of programs and services under 53-3-304 as may be necessary because of:

(a) the actual needs of an individual, as determined in accordance with an employability plan;

(b) funding limitations;

(c) service limitations;

(d) limitations caused by the lack of available employment in the area; and

(e) an insufficient number of recipients in an area to justify establishment of job search, training, and workfare programs.

(2) Recipients residing in areas where programs and services are restricted because of subsection (1) are exempt from mandatory participation in a job search, training, and workfare program.

History: En. Sec. 3, Ch. 701, L. 1989.

53-3-324. Employability plan. (1) The department shall develop or contract for the development of an employability plan for each participant enrolled in job search, training, and workfare programs provided for in 53-3-304.

(2) The department may contract for assessment and testing if:

(a) it determines there is a need for assessment and testing in order to develop an employability plan; and

(b) funds are available for such services.

History: En. Sec. 4, Ch. 701, L. 1989.

53-3-325. Transition-to-work allowance. (1) As an alternative to the programs and services provided for in 53-3-304, the department may pay recipients a transition-to-work allowance. This allowance may be used only for relocation expenses for recipients who have obtained employment in another county or state.

(2) Notwithstanding any other provision of this chapter, a person who elects to receive the allowance provided for in subsection (1) is ineligible for general relief assistance for a period of 16 months.

History: En. Sec. 5, Ch. 701, L. 1989.

53-3-326. Transportation assistance. The department may provide necessary transportation or reimbursement of transportation costs for persons enrolled in job search, training, and workfare programs provided for in 53-3-304.

History: En. Sec. 6, Ch. 701, L. 1989.

53-3-327. Performance standards — monitoring and evaluation of program. (1) The department shall provide standards to measure the performance and effectiveness of the general relief job search, training, and workfare program provided for in 53-3-304. The standards must consist of an objective, quantifiable measure of the extent to which participation in the program increases the employment and earnings of participants and decreases their dependency on public assistance.

(2) In order to determine whether performance standards are met, the department shall monitor and evaluate the program on the basis of appropriate factors that must include the following:

(a) the placement of participants in unsubsidized employment;

(b) the retention of participants in unsubsidized employment;

(c) the increase in earnings, including hourly wages, of participants due to placement in unsubsidized employment;

(d) the reduction in the number of individuals and families receiving general relief; and

(e) the amount of reductions in payments for general relief.

(3) In monitoring and evaluating the performance of the program, the department shall determine the reasons for high and low levels of performance, administrative efficiencies, and program coordination.

History: En. Sec. 7, Ch. 701, L. 1989.

53-3-328. Employability determination — reassessment of additional eligibility. During the final month of eligibility, a vocational specialist shall conduct a reassessment of each applicant for nonmedical general relief to determine whether the applicant should be reclassified as employable or unemployable or should remain classified as having serious barriers to employment and benefits extended according to 53-3-321(3). The reassessment must include an evaluation of the applicant's education, training, experience, and ability to work in substantial, gainful employment.

History: **En. Sec. 2, Ch. 578, L. 1991.**

Compiler's Comments

Effective Date: Section 4, Ch. 578, L. 1991, provided that this section is effective July 1, 1991.

CHAPTER 4

CHILDREN'S SERVICES

Part 1 — Child Welfare Services
(Renumbered by Code Commissioner, 1991)

Part 2 — Aid to Families With Dependent Children

53-4-201. Definitions.
53-4-202. Aid to families with dependent children to be in effect in all counties.
53-4-203. Demonstration program — purpose.
53-4-204 through 53-4-210 reserved.
53-4-211. Administration of aid to families with dependent children.
53-4-212. Department to make rules.
53-4-213. Department rules binding on county welfare departments.
53-4-214. Distribution of copies of law and forms by department.
53-4-215. Cooperation with federal government.
53-4-216. Reports to federal government.
53-4-217. Repealed.
53-4-218 through 53-4-220 reserved.
53-4-221. County department charged with local administration.
53-4-222. County administration subject to rules prescribed by department.
53-4-223. Repealed.
53-4-224 through 53-4-230 reserved.
53-4-231. Eligibility.
53-4-232. Application for assistance.
53-4-233. Investigation of applications.
53-4-234. Repealed.
53-4-235. Repealed.
53-4-236. Repealed.
53-4-237. Stepparent resources and income.
53-4-238 through 53-4-240 reserved.
53-4-241. Amount of assistance determined by department rules.
53-4-242. Periodic reconsideration of assistance.
53-4-243. Special guardianships.
53-4-244. Payments to person interested in child's welfare in lieu of special guardianship.
53-4-245. Payments to Indians not to be decreased because of certain sums received by enrolled tribal members.
53-4-246. County share of participation.
53-4-247. County liability when recipient moves to another county.
53-4-248. Parents liable to department for aid to families with dependent children payments.

Part 3 — Subsidized Adoption
(Renumbered by Code Commissioner, 1991)

Part 4 — Child Adoption Agencies
(Renumbered by Code Commissioner, 1991)

Part 5 — Child Day-Care Centers
(Renumbered by Code Commissioner, 1989)

Part 6 reserved

Part 7 — Training for AFDC Recipients

53-4-701. Purpose.
53-4-702. Definitions.
53-4-703. JOBS program established — purpose.
53-4-704 reserved.
53-4-705. Services and activities.
53-4-706. Participation requirements.
53-4-707. Exemptions.
53-4-708. Alternatives to program participation.
53-4-709 through 53-4-714 reserved.
53-4-715. Assessment — participation agreement — case management.
53-4-716. Child care assistance.
53-4-717. Sanctions.
53-4-718. Performance standards — monitoring and evaluation of program.
53-4-719. Rulemaking authority.
53-4-720. Compliance with federal requirements.

Chapter Cross-References
Minors, Title 41.

Part 1

Child Welfare Services
(Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:
53-4-101. Renumbered 52-2-101.
53-4-102. Renumbered 52-2-102.
53-4-103 through 53-4-110 reserved.
53-4-111. Renumbered 52-2-111.
53-4-112. Renumbered 52-2-112.
53-4-113. Renumbered 52-2-113.
53-4-114. Renumbered 52-2-114.
53-4-115. Renumbered 52-2-115.
53-4-116. Renumbered 52-2-116.
53-4-117. Renumbered 52-2-117.
53-4-118. Renumbered 52-2-118.
53-4-119 and 53-4-120 reserved.
53-4-121. Repealed. Sec. 112, Ch. 609, L. 1987.
53-4-122. Repealed. Sec. 112, Ch. 609, L. 1987.

Histories of Repealed Sections:
53-4-121. En. Sec. 5, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-714(part).
53-4-122. En. Sec. 5, Part 6, Ch. 82, L. 1937; R.C.M. 1947, 71-714(part).

Part 2

Aid to Families With Dependent Children

Part Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

General relief, Title 53, ch. 3.

Medical assistance — medicaid, Title 53, ch. 6, part 1.

53-4-201. Definitions. (1) (a) The term "dependent child", for public assistance purposes, means:

(i) a child under the age of 18; or

(ii) a person under the age of 19 who is a student under the regulations prescribed by the department.

(b) The child ((a)(i) or (a)(ii) above) must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent and be living with a relative, as defined in rules adopted by the department.

(2) The term "aid to families with dependent children" means money payments made on behalf of a dependent child pursuant to Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.), including payments to meet the needs of a relative with whom the dependent child is living. The term also includes emergency assistance to families with children as provided by the federal Social Security Act.

(3) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(4) "Public assistance" or "assistance" means any type of monetary or other assistance furnished under this title to a person by a state or county agency, regardless of the original source of the assistance.

History: (1)En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 1, Ch. 309, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; Sec. 71-501, R.C.M. 1947; (2)En. Subd. (b), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 21, Ch. 199, L. 1951; amd. Sec. 5, Ch. 71, L. 1957; amd. Sec. 1, Ch. 292, L. 1971; Sec. 71-502, R.C.M. 1947; (3), (4)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1, 71-501(1), 71-502; amd. Sec. 1, Ch. 2, Sp. L. 1981; amd. Sec. 1, Ch. 53, L. 1985; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 4, Ch. 266, L. 1989.

Cross-References

Youth — declaration of policy, 41-3-101.

53-4-202. Aid to families with dependent children to be in effect in all counties. It is hereby mandatory and required that the state plan and operation of aid to families with dependent children shall be in effect in each and every county of the state, and the administration and supervision of aid to families with dependent children shall be uniform throughout the several counties of the state.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(c); amd. Sec. 155, Ch. 370, L. 1987.

53-4-203. Demonstration program — purpose. (1) The department of social and rehabilitation services shall seek an agreement with the U.S. secretary of health and human services in order to establish a demonstration program as authorized under section 503 of the federal Family Support Act of 1988, Public Law 100-485.

(2) The purpose of the program under subsection (1) is to test a policy that would either eliminate or modify the requirements of 45 CFR 233.100 to allow unemployed recipients of aid to families with dependent children to work more than 100 hours in a month and still retain eligibility for public assistance.

History: En. Sec. 1, Ch. 703, L. 1989.

53-4-204 through 53-4-210 reserved.

53-4-211. Administration of aid to families with dependent children. The department is hereby authorized and is charged with the general administration and supervision of aid to families with dependent children under the powers, duties, and functions as prescribed in chapter 2 of this title.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(a); amd. Sec. 155, Ch. 370, L. 1987.

53-4-212. Department to make rules. The department shall make such rules and take such action as may be necessary or desirable for carrying out the provisions of this part.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(part (e)).

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-4-213. Department rules binding on county welfare departments. All rules of the department made under this part shall be binding upon the county departments of public welfare.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(part (e)); amd. Sec. 5, Ch. 38, L. 1979.

53-4-214. Distribution of copies of law and forms by department. The department shall have printed and distribute copies of this part to all county welfare departments and shall prescribe the form of and print and supply to the county welfare department blanks of applications, reports, and such other forms as may be necessary in relation to aid to families with dependent children.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(d); amd. Sec. 155, Ch. 370, L. 1987.

53-4-215. Cooperation with federal government. The department shall cooperate with the federal government in matters of mutual concern pertaining to assistance to dependent children, including the adoption of such methods of administration as are found by the federal government to be necessary for the efficient operation of the plan for such assistance.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(f).

53-4-216. Reports to federal government. The department shall make such reports in such form and containing such information as the federal government may from time to time require and comply with such provisions as the federal government may from time to time find necessary to assure the correctness and verification of such reports.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(g).

53-4-217. Repealed. Sec. 3, Ch. 370, L. 1989.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(h).

53-4-218 through 53-4-220 reserved.

53-4-221. County department charged with local administration. The county department of public welfare shall be charged with the local administration and supervision of aid to families with dependent children, subject to the powers, duties, and functions prescribed for the county department in chapter 2 of this title.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(b); amd. Sec. 155, Ch. 370, L. 1987.

53-4-222. County administration subject to rules prescribed by department. The county department of public welfare shall administer the provisions of this part in the respective counties subject to the rules prescribed by the department of social and rehabilitation services pursuant to the provisions of this part.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(i).

Cross-References

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

53-4-223. Repealed. Sec. 8, Ch. 266, L. 1989.

History: En. Sec. 2, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 156, L. 1951; amd. Sec. 50, Ch. 121, L. 1974; R.C.M. 1947, 71-503(j); amd. Sec. 155, Ch. 370, L. 1987.

53-4-224 through 53-4-230 reserved.

53-4-231. Eligibility. (1) Assistance shall be granted under this part to any dependent child, as defined in 53-4-201, who is in need of such assistance.

(2) Aid to families with dependent children assistance payments may be made to a needy pregnant woman with no other children receiving such payments. Payments may begin no earlier than the third month prior to the month in which the child is expected to be born.

(3) Aid to families with dependent children shall be granted to or for the care of children of unemployed parents who would not otherwise be entitled to such aid because the child is living in the home with both parents. The department may adopt rules to administer the grant of assistance to children of unemployed parents pursuant to Title IV, section 407, of the federal Social Security Act, as amended.

History: En. Sec. 3, Part 4, Ch. 82, L. 1937; Subds. (d) and (e) rep. Sec. 9, Ch. 213, L. 1943; amd. Sec. 1, Ch. 148, L. 1947; amd. Sec. 1, Ch. 50, L. 1949; amd. Sec. 22, Ch. 199, L.

1951; amd. Sec. 1, Ch. 90, L. 1971; R.C.M. 1947, 71-504; amd. Sec. 3, Ch. 450, L. 1979; amd. Sec. 1, Ch. 10, Sp. L. 1981; (3)En. Secs. 2, 3, Ch. 53, L. 1985; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 1, Ch. 403, L. 1987.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fraudulently obtaining public assistance — theft, 53-2-107.

53-4-232. Application for assistance. Application for assistance under this part shall be made to the county department of the county in which the dependent child is residing. Such application shall be made by the relative with whom the child is living or will live. One application may be made for several children of the same family if they reside with the same person. All individuals wishing to make application for this assistance shall have the opportunity to do so.

History: En. Sec. 4, Part 4, Ch. 82, L. 1937; amd. Sec. 3, Ch. 213, L. 1943; amd. Sec. 23, Ch. 199, L. 1951; R.C.M. 1947, 71-505.

53-4-233. Investigation of applications. Whenever a county department receives an application for assistance under this part, an investigation shall be promptly made. The investigation of each application for aid to families with dependent children shall be conducted by the county department of public welfare. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of information secured with regard to his circumstances. Upon completion of an investigation, aid shall be furnished promptly to all eligible persons. Each applicant shall receive written notice of the decision concerning his application.

History: En. Sec. 5, Part 4, Ch. 82, L. 1937; amd. Sec. 24, Ch. 199, L. 1951; R.C.M. 1947, 71-506; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 5, Ch. 266, L. 1989.

Cross-References

Abused, neglected, and dependent children — action on reporting, 41-3-202.

53-4-234. Repealed. Sec. 2, Ch. 2, Sp. L. 1981.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(2).

53-4-235. Repealed. Sec. 2, Ch. 2, Sp. L. 1981.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(3).

53-4-236. Repealed. Sec. 2, Ch. 2, Sp. L. 1981.

History: En. Subd. (a), Sec. 1, Part 4, Ch. 82, L. 1937; amd. Sec. 17, Ch. 129, L. 1939; amd. Sec. 7, Ch. 213, L. 1943; amd. Sec. 4, Ch. 71, L. 1957; amd. Sec. 2, Ch. 255, L. 1965; amd. Sec. 1, Ch. 373, L. 1971; amd. Sec. 30, Ch. 121, L. 1974; amd. Sec. 33, Ch. 37, L. 1977; R.C.M. 1947, 71-501(4).

53-4-237. Stepparent resources and income. Notwithstanding the provisions of 40-6-217, in the administration of this part the department may consider the income and resources of stepparents and other individuals who reside in the home as resources and income available to the household.

History: En. Sec. 1, Ch. 3, Sp. L. 1981.

53-4-238 through 53-4-240 reserved.

53-4-241. Amount of assistance determined by department rules. The amount of aid to families with dependent children granted in any case shall be determined according to the rules and standards of assistance established by the department, as required by the federal Social Security Act.

History: En. Sec. 6, Part 4, Ch. 82, L. 1937; amd. Sec. 25, Ch. 199, L. 1951; R.C.M. 1947, 71-507; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 6, Ch. 266, L. 1989.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-4-242. Periodic reconsideration of assistance. All assistance grants made under this part shall be reconsidered as frequently as may be required by the rules of the department of social and rehabilitation services.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(part); amd. Sec. 7, Ch. 266, L. 1989.

53-4-243. Special guardianships. (1) If the county department after investigation finds that any recipient is not utilizing the grant adequately for the needs of the child or children, is dissipating such grant, or refuses or fails to accept employment or training and payments made to him would not be used in the best interests of the child or children, the county department may request the county attorney to file a petition in the district court for the appointment of such recipient as guardian of the assistance grant in behalf of the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the county department not less than 5 days before the date set for such hearing. Such petition may be filed with the clerk of the district court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interests of the child or children and all parties concerned that such guardian be appointed, he shall order such appointment and may require such guardian to render to the court a detailed, itemized account of expenditures of such assistance payments at such times as the court considers advisable.

(2) It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant or sooner on order of the court upon good cause shown.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(part).

Cross-References

Guardianships, Title 72, ch. 5.

53-4-244. Payments to person interested in child's welfare in lieu of special guardianship. In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person found by the county department to be interested in or concerned with the welfare of such needy child or children in accordance with the rules established by the department of social and rehabilitation services.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(part); amd. Sec. 2, Ch. 398, L. 1981.

53-4-245. Payments to Indians not to be decreased because of certain sums received by enrolled tribal members. When federal law or regulations require, any amount received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises may not be used to decrease the amount of assistance received under this part.

History: En. Sec. 8, Part 4, Ch. 82, L. 1937; amd. Sec. 1, Ch. 47, L. 1959; amd. Sec. 1, Ch. 152, L. 1959; amd. Sec. 1, Ch. 351, L. 1969; amd. Sec. 49, Ch. 121, L. 1974; amd. Sec. 34, Ch. 37, L. 1977; R.C.M. 1947, 71-509(3).

53-4-246. County share of participation. Each county where the recipient of aid to families with dependent children resides shall reimburse the department of social and rehabilitation services in the amount of 22.5% of the approved aid to families with dependent children grants, exclusive of the federal share.

History: En. Sec. 7, Part 4, Ch. 82, L. 1937; amd. Sec. 18, Ch. 129, L. 1939; amd. Sec. 1, Ch. 191, L. 1945; amd. Sec. 1, Ch. 71, L. 1947; amd. Sec. 6, Ch. 71, L. 1957; amd. Sec. 1, Ch. 7, L. 1961; amd. Sec. 2, Ch. 292, L. 1971; amd. Sec. 2, Ch. 373, L. 1971; amd. Sec. 2, Ch. 309, L. 1974; R.C.M. 1947, 71-508; amd. Sec. 1, Ch. 413, L. 1979; amd. Sec. 155, Ch. 370, L. 1987.

53-4-247. County liability when recipient moves to another county. A recipient of aid to families with dependent children who moves to another county in the state shall continue to receive assistance. The county that the recipient moves to shall be charged by the department for the county share of assistance. The county that a recipient moves from shall notify the county that the recipient moves to.

History: En. Sec. 9, Part 4, Ch. 82, L. 1937; amd. Sec. 26, Ch. 199, L. 1951; R.C.M. 1947, 71-510; amd. Sec. 4, Ch. 450, L. 1979; amd. Sec. 155, Ch. 370, L. 1987.

Cross-References

Residence — rules for determining, 1-1-215.

53-4-248. Parents liable to department for aid to families with dependent children payments. (1) A payment of public assistance money made to or for the benefit of a dependent child creates a debt due and owing to the department by the natural or adoptive parents who are legally responsible for the support of the child by statute or court decree in an amount equal to the amount of public assistance paid. However, where the support obligation is based upon a court decree, the debt is limited to the amount of the court decree.

(2) The department is subrogated to the right of the child or person having the care, custody, and control of the child to prosecute any support action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of money thus expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department is subrogated to the debt created by the order and the money judgment is in favor of the department. No obligee may commence an action to recover support due and owing to him without first filing an affidavit with the court stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department in writing of the pending action.

(3) In no case may a debt arising under this section be incurred by or collected from a parent or other person while he is the recipient of public assistance money for the benefit of minor dependent children.

(4) The remedies herein provided are in addition to and not in lieu of existing common law and statutory law.

(5) The department or its legal representatives may, at any time consistent with the income, earning capacity, and resources of the debtor, petition the court having jurisdiction over the particular case to set or reset a level and schedule of payments to be paid upon the debt.

History: En. 71-511 by Sec. 1, Ch. 368, L. 1974; amd. Sec. 4, Ch. 379, L. 1977; R.C.M. 1947, 71-511.

Cross-References

State collection of child support, Title 40, ch. 5, part 2.

Deduction from wages for owed child support, Title 40, ch. 5, part 3.

When parent liable for necessaries supplied to child, 40-6-215.

Part 3

Subsidized Adoption (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-4-301. Renumbered 52-2-501.
53-4-302. Renumbered 52-2-502.
53-4-303. Renumbered 52-2-503.
53-4-304. Renumbered 52-2-504.
53-4-305. Repealed. Sec. 1, Ch. 354, L. 1989.
53-4-306. Renumbered 52-2-505.
53-4-307. Renumbered 52-2-506.
53-4-308. Renumbered 52-2-507.
53-4-309. Renumbered 52-2-508.
53-4-310. Renumbered 52-2-509.
53-4-311. Renumbered 52-2-510.

Histories of Repealed Sections:

53-4-305. En. 71-1812 by Sec. 7, Ch. 434, L. 1977; R.C.M. 1947, 71-1812.

Part 4

Child Adoption Agencies
(Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-4-401. Renumbered 52-2-401.
53-4-402. Renumbered 52-2-402.
53-4-403. Renumbered 52-2-403.
53-4-404. Renumbered 52-2-404.
53-4-405. Renumbered 52-2-405.
53-4-406. Renumbered 52-2-406.
53-4-407. Renumbered 52-2-407.

Part 5

Child Day-Care Centers
(Renumbered by Code Commissioner, 1989)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-4-501. Renumbered 52-2-702(1) and 52-2-703.
53-4-502. Renumbered 52-2-721.
53-4-503. Renumbered 52-2-704(2)(d) through (2)(g).
53-4-504. Renumbered 52-2-731.
53-4-505. Renumbered 52-2-734.
53-4-506. Renumbered 52-2-735.
53-4-507. Renumbered 52-2-722.
53-4-508. Renumbered 52-2-723.
53-4-509. Renumbered 52-2-724.
53-4-510. Renumbered 52-2-725.
53-4-511. Renumbered 52-2-733.
53-4-512. Renumbered 52-2-732.
53-4-513. Renumbered 52-2-726.
53-4-514. Renumbered 52-2-713.
53-4-515. Renumbered 52-2-741.
53-4-516. Repealed. Sec. 1, Ch. 162, L. 1981.

Histories of Repealed Sections:

53-4-516. En. Secs. 1, 3, Ch. 637, L. 1979; amd. Sec. 17, Ch. 606, L. 1981.

Part 6 reserved

Part 7

Training for AFDC Recipients

53-4-701. Purpose. It is the purpose of this part to establish a program, consistent with the provisions of the federal Family Support Act of 1988, to assure that recipients of the aid to families with dependent children program obtain the education, training, and employment needed to avoid long-term welfare dependency.

History: En. Sec. 1, Ch. 550, L. 1989.

53-4-702. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Aid to families with dependent children" has the same meaning as provided in 53-4-201.

(2) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(3) "Family Support Act of 1988" means the federal Family Support Act of 1988, Public Law 100-485, as amended.

(4) "JOBS program" or "program" means the job opportunities and basic skills training program established in 53-4-703.

History: En. Sec. 2, Ch. 550, L. 1989.

53-4-703. JOBS program established — purpose. (1) The department shall establish and administer a job opportunities and basic skills training (JOBS) program that meets the requirements of section 201 of the federal Family Support Act of 1988 (42 U.S.C. 602(a)(19), 681 through 686).

(2) The purpose of the program is to provide recipients of aid to families with dependent children the education, training, and employment that will help them avoid long-term welfare dependency.

History: En. Sec. 3, Ch. 550, L. 1989.

53-4-704 reserved.

53-4-705. Services and activities. (1) Under the program provided for in 53-4-703, the department shall make available a broad range of services and activities to assist recipients of aid to families with dependent children. Such services and activities may include:

(a) appropriate educational activities, including:

(i) high school education or its equivalent, combined with training as needed;

(ii) basic and remedial education to help participants achieve a basic literacy level; and

(iii) education for individuals with limited English language proficiency;

(b) job skills training;

(c) job readiness activities to help prepare participants for work;

(d) job development and job placement;

(e) group and individual job search activities as provided for in 42 U.S.C. 682(g);

(f) on-the-job training;

(g) work supplementation programs as provided for in 42 U.S.C. 682(e); and

(h) community work experience programs as provided for in 42 U.S.C. 682(f).

(2) In addition to the services and activities provided in subsection (1), the department may offer to participants under the program:

(a) postsecondary education in appropriate cases; and

(b) such other education, training, and employment activities as may be determined necessary.

History: En. Sec. 4, Ch. 550, L. 1989.

53-4-706. Participation requirements. (1) Except as otherwise provided in this section and 53-4-707, the department may require individuals to participate in the JOBS program as a condition of their eligibility for aid to families with dependent children.

(2) To the extent that the program is available and that state resources permit, the department shall:

(a) require recipients of aid to families with dependent children with respect to whom the state guarantees child care in accordance with section 402(g) of the Social Security Act (42 U.S.C. 602(g)) to participate in the program; and

(b) allow applicants for and recipients of aid to families with dependent children who are not required under subsection (2)(a) to participate in the program to do so on a voluntary basis.

History: En. Sec. 5, Ch. 550, L. 1989.

53-4-707. Exemptions. (1) An individual may not be required to participate in the JOBS program if the individual:

(a) is ill, incapacitated, or of advanced age;

(b) is needed in the home because of the illness or incapacity of another member of the household;

(c) is the parent or other relative who is personally providing care for a child under 3 years of age, except as otherwise provided in administrative rules adopted by the department;

(d) is employed for 30 or more hours a week;

(e) is a child who is under the age of 16 or attends an elementary, secondary, or vocational school on a full-time basis;

(f) is pregnant and it has been medically verified that the child is expected to be born in the month in which participation in the program would otherwise be required. Such individual may not be required to participate in the program within the 6-month period immediately following that month.

(g) resides in an area of the state where the program is not available; or

(h) is for any other reason exempt from participating in the program pursuant to state or federal regulations.

(2) If a family is eligible for aid to families with dependent children because of the unemployment of the parent who is the principal wage earner, subsection (1)(c) applies to only one parent.

History: En. Sec. 6, Ch. 550, L. 1989.

53-4-708. Alternatives to program participation. (1) In lieu of participation in the JOBS program, the department may require that an individual participate, on a full-time basis, in educational activities directed toward the attainment of a high school diploma or its equivalent if the individual:

(a) is a custodial parent as defined in administrative rules adopted by the department;

(b) has not attained 20 years of age; and

(c) has not successfully completed a high school education.

(2) Attendance in good standing at an institution of higher education or a school of vocational or technical training may constitute satisfactory participation in the program under 53-4-706.

History: En. Sec. 7, Ch. 550, L. 1989.

53-4-709 through 53-4-714 reserved.

53-4-715. Assessment — participation agreement — case management. (1) The department shall make an initial assessment of the needs, skills, and employability of each participant in the JOBS program. On the basis of such assessment, the department shall, in consultation with the participant, develop an employability plan as required in 42 U.S.C. 682(b)(1)(B).

(2) Following the development of an employability plan for a participant, the department may require the participant to enter into an agreement that specifies such matters as:

(a) the participant's obligations under the program;

(b) the duration of participation; and

(c) the services and activities to be provided under the program during the period of participation.

(3) The department may assign a case manager to each participant and the participant's family. The case manager shall assist the participant and his family in obtaining services that may be needed to assure effective participation in the program.

History: En. Sec. 8, Ch. 550, L. 1989.

53-4-716. Child care assistance. In accordance with sections 301 and 302 of the federal Family Support Act of 1988 (42 U.S.C. 602(g)), the department shall provide necessary child care assistance to:

(1) each individual participating in the program established under 53-4-703; and

(2) any individual whose family has ceased to receive aid to families with dependent children as a result of increased hours or income from employment or because of loss of federally prescribed earned income disregards.

History: En. Sec. 9, Ch. 550, L. 1989.

53-4-717. Sanctions. An individual who without good cause fails to participate in the JOBS program as required or who without good cause refuses to accept suitable employment shall lose eligibility for aid to families with dependent children as provided in 42 U.S.C. 602(a)(19)(G).

History: En. Sec. 10, Ch. 550, L. 1989.

53-4-718. Performance standards — monitoring and evaluation of program. (1) In addition to standards of performance established pursuant to section 487 of the federal Family Support Act of 1988 (42 U.S.C. 687), the department shall provide standards to further measure the performance and effectiveness of the program. The standards must consist of an objective, quantifiable measure of the extent to which participation in the program increases the employment and earnings of participants and decreases their dependency on public assistance.

(2) In order to determine whether performance standards are met, the department shall monitor and evaluate the program on the basis of appropriate factors that must include the following:

(a) the placement of participants in unsubsidized employment;

(b) the retention of participants in unsubsidized employment;

(c) the increase in earnings, including hourly wages, of participants due to placement in unsubsidized employment;

(d) the reduction in the number of individuals and families receiving aid to families with dependent children; and

(e) the amount of reductions in payments for aid to families with dependent children.

(3) In monitoring and evaluating the performance of the program, the department shall determine the reasons for high and low levels of performance, administrative efficiencies, and program coordination.

History: En. Sec. 11, Ch. 550, L. 1989.

53-4-719. Rulemaking authority. The department of social and rehabilitation services may adopt rules necessary to implement the provisions of this part.

History: En. Sec. 15, Ch. 550, L. 1989.

53-4-720. Compliance with federal requirements. The department shall establish and administer the JOBS program in compliance with federal requirements and adopt such methods of administration as may be necessary to obtain federal funds for the program in the maximum amount possible.

History: En. Sec. 16, Ch. 550, L. 1989.

CHAPTER 5

ADULT SERVICES

Part 1 — Problems of Aging
(Renumbered by Code Commissioner, 1991)

Part 2 — Protective Services
(Renumbered by Code Commissioner, 1991)

Part 3 — Adult Foster Family Care
(Renumbered by Code Commissioner, 1991)

Part 4 — Old-Age Assistance Recovery

53-5-401. Old-age assistance recovery.

Part 5 — Montana Elder and Developmentally Disabled Abuse Prevention Act
(Renumbered by Code Commissioner, 1991)

Part 6 — State Plan on Aging
(Renumbered by Code Commissioner, 1991)

Part 7 — Montana Older Americans Act
(Renumbered by Code Commissioner, 1991)

Part 8 — Ombudsman Services
(Renumbered by Code Commissioner, 1991)

Part 9 — Notice of Medicare Assignments

53-5-901. Medicare assignments — notice required.

Part 1

Problems of Aging
(Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-101. Renumbered 52-3-101.
53-5-102. Renumbered 52-3-102.
53-5-103. Renumbered 52-3-103.
53-5-104 through 53-5-110 reserved.
53-5-111. Renumbered 52-3-111.

Part 2

Protective Services
(Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-201. Renumbered 52-3-201.
53-5-202. Renumbered 52-3-202.
53-5-203. Renumbered 52-3-203.
53-5-204. Renumbered 52-3-204.
53-5-205. Renumbered 52-3-205.
53-5-206. Renumbered 52-3-206.
53-5-207. Renumbered 52-3-207.

Part 3

Adult Foster Family Care
(Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-301. Renumbered 52-3-301.
53-5-302. Renumbered 52-3-302.
53-5-303. Renumbered 52-3-303.
53-5-304. Renumbered 52-3-304.
53-5-305. Renumbered 52-3-305.
53-5-306 through 53-5-310 reserved.
53-5-311. Renumbered 52-3-311.
53-5-312. Renumbered 52-3-312.

53-5-313. Renumbered 52-3-313.
53-5-314. Renumbered 52-3-314.

Part 4

Old-Age Assistance Recovery

53-5-401. Old-age assistance recovery. (1) Upon the death of any recipient of old-age assistance, the department of social and rehabilitation services shall execute and present a claim against the estate of the person within the time specified in the published notice to creditors in the estate matter for the total amount of assistance paid under Chapter 82, Laws of 1937, as amended. A claim may not be enforced against any real estate of a recipient while it is occupied by the surviving spouse or dependent as a home.

(2) Every transfer of property made by deed, grant, bargain, sale, or gift by any recipient of old-age assistance and recorded subsequent to his having received such assistance is presumed to have been made without value, as the term "value" is defined by 31-2-330, and with the intent to defeat the purposes of this section. These presumptions are disputable and may be controverted by competent evidence.

(3) If the federal law so requires, the federal government is entitled to a share of any amounts collected from recipients or their estates in proportion to the amount that it has contributed to the grants recovered, and the amount due the United States must be promptly paid by the state to the United States government. The remaining portion of the amount collected must be distributed to the state and county in proportion to the total amount paid by each.

History: En. Sec. 11, Part 3, Ch. 82, L. 1937; amd. Sec. 1, Ch. 178, L. 1943; amd. Sec. 1, Ch. 63, L. 1947; amd. Sec. 1, Ch. 234, L. 1953; R.C.M. 1947, 71-412; amd. Sec. 13, Ch. 324, L. 1991.

Compiler's Comments

1991 Amendment: In (2), in two places, substituted reference to value for reference to fair consideration and substituted reference to 31-2-330 for reference to 31-2-303; and made minor changes in style.

Cross-References

Recovery from recipient's estate, 53-2-611.

Claims against estate, Title 72, ch. 3, part 8.

Part 5

Montana Elder and Developmentally Disabled Abuse Prevention Act (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-5-501. Renumbered 52-3-801.
53-5-502. Renumbered 52-3-802.
53-5-503. Renumbered 52-3-803.
53-5-504. Renumbered 52-3-804.
53-5-505. Renumbered 52-3-805.
53-5-506 through 53-5-510 reserved.

53-5-511. Renumbered 52-3-811.
53-5-512. Renumbered 52-3-812.
53-5-513. Renumbered 52-3-813.
53-5-514. Renumbered 52-3-814.
53-5-515 through 53-5-520 reserved.
53-5-521. Renumbered 52-3-821.
53-5-522 through 53-5-524 reserved.
53-5-525. Renumbered 52-3-825.

Part 6

State Plan on Aging (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:
53-5-601. Renumbered 52-3-401.
53-5-602. Renumbered 52-3-402.
53-5-603. Renumbered 52-3-403.
53-5-604. Renumbered 52-3-404.
53-5-605. Renumbered 52-3-405.
53-5-606. Renumbered 52-3-406.

Part 7

Montana Older Americans Act (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:
53-5-701. Renumbered 52-3-501.
53-5-702. Renumbered 52-3-502.
53-5-703. Renumbered 52-3-503.
53-5-704. Renumbered 52-3-504.
53-5-705. Renumbered 52-3-505.
53-5-706. Renumbered 52-3-506.

Part 8

Ombudsman Services (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:
53-5-801. Renumbered 52-3-601.
53-5-802. Renumbered 52-3-602.
53-5-803. Renumbered 52-3-603.
53-5-804. Renumbered 52-3-604.
53-5-805. Renumbered 52-3-605.

Part 9

Notice of Medicare Assignments

53-5-901. Medicare assignments — notice required. (1) A health care provider shall give notice to a medicare patient as to whether or not the provider accepts payment for services on the basis of an assignment, pursuant to section 1842(b)(3)(B)(ii) of the federal Social Security Act (42 U.S.C. 1395u(b)(3)(B)(ii)), the terms of which provide that the full charge for services is the amount of the medicare approved rate for payment of the applicable service plus any deductible, coinsurance, or copayment required to be paid by the patient.

(2) The notice required under subsection (1) must be posted by each health care provider in a conspicuous area in his place of business.

(3) For purposes of this section, "health care provider" means a person, firm, corporation, association, or institution that provides goods or services subject to reimbursement under the federal medicare program in accordance with Title XVIII of the federal Social Security Act (42 U.S.C. 1395, et seq.).

History: En. Sec. 1, Ch. 306, L. 1989.

CHAPTER 6

HEALTH CARE SERVICES

Part 1 — Medical Assistance—Medicaid

53-6-101. Montana medicaid program — authorization of services.
53-6-102. Repealed.
53-6-103. State plan and operation of medicaid program to be in effect and uniform throughout state.
53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor.
53-6-105. Discrimination prohibited.
53-6-106. Health care facility standards — definitions.
53-6-107. Sanctions — penalties.
53-6-108. Rules governing sanctions or remedies.
53-6-109 reserved.
53-6-110. Report and recommendations to legislature on medicaid funding.
53-6-111. Department charged with general administration of medical assistance — adoption of rules to punish fraud.
53-6-112. Department to print and distribute copies of part and certain forms.
53-6-113. Department to adopt rules.
53-6-114. Rules of department binding on county welfare departments.
53-6-115. Contracts with other agencies.
53-6-116. Medicaid managed care.
53-6-117. Participation requirements.
53-6-118 through 53-6-120 reserved.
53-6-121. County department charged with local administration of medical assistance.
53-6-122 through 53-6-130 reserved.

53-6-131. Eligibility requirements.
53-6-132. Application for assistance.
53-6-133. Investigation and determination of eligibility.
53-6-134. Extension of eligibility for medical assistance to persons terminated from aid to families with dependent children.
53-6-135 through 53-6-138 reserved.
53-6-139. Terminated.
53-6-140 reserved.
53-6-141. Repealed.
53-6-142. Periodic review of assistance.
53-6-143. Limitations on liens and recoveries.
53-6-144. Relative's responsibility.
53-6-145 through 53-6-149 reserved.
53-6-150. Statutory appropriation of donated funds.
53-6-151 through 53-6-160 reserved.
53-6-161. Purpose.
53-6-162. Definitions.
53-6-163. Waiver of federal requirements.
53-6-164. Rulemaking.

Part 2 — Renal Disease Treatment Program (Renumbered by Code Commissioner, 1991)

Part 3 — Montana State Hospital (Renumbered by Code Commissioner, 1991)

Part 4 — Community-Based Long-Term Care Medicaid Services

53-6-401. Definitions.
53-6-402. Community-based long-term care facilities — powers and duties of department.

Part 1

Medical Assistance — Medicaid

Part Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

General relief, Title 53, ch. 3.

Aid to Families With Dependent Children, Title 53, ch. 4, part 2.

53-6-101. Montana medicaid program — authorization of services. (1) There is a Montana medicaid program established for the purpose of providing necessary medical services to eligible persons who have need for medical assistance. The Montana medicaid program is a joint federal-state program administered under this chapter and in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended. The department of social and rehabilitation services shall administer the Montana medicaid program.

(2) Medical assistance provided by the Montana medicaid program includes the following services:

(a) inpatient hospital services;

(b) outpatient hospital services;

(c) other laboratory and x-ray services, including minimum mammography examination as defined in 33-22-132;

(d) skilled nursing services in long-term care facilities;

(e) physicians' services;

(f) nurse specialist services;

(g) early and periodic screening, diagnosis, and treatment services for persons under 21 years of age;

(h) ambulatory prenatal care for pregnant women during a presumptive eligibility period, as provided in 42 U.S.C. 1396a(a)(47) and 42 U.S.C. 1396r-1;

(i) targeted case management services, as authorized in 42 U.S.C. 1396n(g), for high-risk pregnant women;

(j) services provided by physician assistants-certified within the scope of their practice and that are otherwise directly reimbursed as allowed under department rule to an existing provider;

(k) health services provided under a physician's orders by a public health department; and

(l) federally qualified health center services, as defined in 42 U.S.C. 1396d(l)(2).

(3) Medical assistance provided by the Montana medicaid program may, as provided by department rule, also include the following services:

(a) medical care or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;

(b) home health care services;

(c) private-duty nursing services;

(d) dental services;

(e) physical therapy services;

(f) mental health center services administered and funded under a state mental health program authorized under Title 53, chapter 21, part 2;

(g) clinical social worker services;

(h) prescribed drugs, dentures, and prosthetic devices;

(i) prescribed eyeglasses;

(j) other diagnostic, screening, preventive, rehabilitative, chiropractic, and osteopathic services;

(k) inpatient psychiatric hospital services for persons under 21 years of age;

(l) services of professional counselors licensed under Title 37, chapter 23;

(m) hospice care, as defined in 42 U.S.C. 1396d(o);

(n) case management services as provided in 42 U.S.C. 1396d(a) and 1396n(g), including targeted case management services for the mentally ill but limited to services provided in crisis intervention programs;

(o) inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201; and

(p) any additional medical service or aid allowable under or provided by the federal Social Security Act.

(4) The department may implement, as provided for in Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, a program under medicaid for payment of medicare premiums, deductibles, and coinsurance for persons not otherwise eligible for medicaid.

(5) The department may set rates for medical and other services provided to recipients of medicaid and may enter into contracts for delivery of services to individual recipients or groups of recipients.

(6) The services provided under this part may be only those that are medically necessary and that are the most efficient and cost effective.

(7) The amount, scope, and duration of services provided under this part must be determined by the department in accordance with Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

(8) Services, procedures, and items of an experimental or cosmetic nature may not be provided.

(9) If available funds are not sufficient to provide medical assistance for all eligible persons, the department may set priorities to limit, reduce, or otherwise curtail the amount, scope, or duration of the medical services made available under the Montana medicaid program.

(10) Community-based medicaid services, as provided for in part 4 of this chapter, must be provided in accordance with the provisions of this chapter and the rules adopted thereunder.

History: En. Sec. 2, Ch. 325, L. 1967; amd. Sec. 1, Ch. 261, L. 1971; R.C.M. 1947, 71-1512(part); amd. Sec. 1, Ch. 77, L. 1985; amd. Sec. 1, Ch. 329, L. 1987; amd. Sec. 19, Ch. 97, L. 1989; amd. Sec. 1, Ch. 417, L. 1989; amd. Sec. 1, Ch. 633, L. 1989; amd. Sec. 10, Ch. 649, L. 1989; amd. Sec. 1, Ch. 711, L. 1989; amd. Sec. 1, Ch. 310, L. 1991; amd. Sec. 1, Ch. 388, L. 1991; amd. Secs. 3, 7, Ch. 460, L. 1991; amd. Sec. 4, Ch. 634, L. 1991; amd. Sec. 3, Ch. 663, L. 1991; amd. Sec. 3, Ch. 764, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 310 in (3)(l), after "chapter 23", deleted "if funds are specifically appropriated for the inclusion of these services in the Montana medicaid program". Amendment effective July 1, 1991.

Chapter 388 deleted former (2)(j) that included hospice care as a service provided by the Medicaid program; inserted (2)(l) to include qualified health center services in the Medicaid program; and inserted (3)(m) to include hospice care as a service that may be provided by Department rule. Amendment effective July 1, 1991.

Section 3, Ch. 460, inserted (3)(n) authorizing case management services; and made minor changes in style. Section 7, Ch. 460, a coordination instruction, in (3)(n), after "1396n(g)", inserted language including targeted case management services under the Medicaid program for the mentally ill in crisis intervention programs. Amendments effective July 1, 1991.

Chapter 634 inserted (2)(h) providing for mandatory ambulatory prenatal care; inserted (2)(i) providing mandatory targeted case management services for high-risk pregnant women; and deleted former (3)(m) providing permissive ambulatory prenatal care. Amendment effective June 30, 1991.

Chapter 663 in (2)(c) inserted language relating to minimum mammography examination.

Chapter 764 inserted (3)(o) authorizing medical assistance provided by the state Medicaid program to include "inpatient psychiatric services for persons under 21 years of age, as provided in 42 U.S.C. 1396d(h), in a residential treatment facility, as defined in 50-5-101, that is licensed in accordance with 50-5-201". Amendment effective July 1, 1991.

Termination Provision Eliminated: Section 3, Ch. 388, L. 1991, amended sec. 15, Ch. 649, L. 1989, to read: "[Sections 1 through 9 and 11 through 14] terminate June 30, 1991." The effect of the amendment was to eliminate the termination date of subsection (3)(m) (rendered void by Ch. 634), reauthorizing ambulatory prenatal care for pregnant women during the presumptive eligibility period provided by federal law. Amendment effective July 1, 1991.

Coordination Instruction: The amendments to this section in sec. 5, Ch. 636, L. 1991, were voided by sec. 7, Ch. 460, L. 1991, a coordination instruction.

Cross-References

Physician assistant-certified defined, 37-20-401.

Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act, Title 50, ch. 19, part 3.

Duties of Advisory Council, 50-19-312.

Community-based long-term care — medicaid, Title 53, ch. 6, part 4.

53-6-102. Repealed. Sec. 8, Ch. 711, L. 1989.

History: En. Sec. 2, Ch. 325, L. 1967; amd. Sec. 1, Ch. 261, L. 1971; R.C.M. 1947, 71-1512(part).

53-6-103. State plan and operation of medicaid program to be in effect and uniform throughout state. The Montana medicaid program, except for those services provided under part 4 of this chapter, shall be in effect in each and every county of the state, and the administration and supervision of the program shall be uniform throughout the counties of the state. However, the department of social and rehabilitation services may implement temporary or demonstration programs as permitted by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(3); amd. Sec. 2, Ch. 711, L. 1989.

53-6-104. Freedom of doctors to treat recipients of medical assistance — freedom to select doctor. (1) The department of social and rehabilitation services shall provide for professional freedom of those licensed practitioners who provide medical assistance under this part and provide reasonable freedom of choice to recipients of medical aid to select the vendor or provider of medical care, services, or prescribed drugs.

(2) Nothing in this section may be construed to prohibit the department from imposing conditions on the payment of provider services and the receipt of medical assistance, as provided for under 53-6-111 and 53-6-113 through 53-6-115.

History: En. Sec. 4, Ch. 325, L. 1967; R.C.M. 1947, 71-1514; amd. Sec. 1, Ch. 475, L. 1985; amd. Sec. 3, Ch. 711, L. 1989.

53-6-105. Discrimination prohibited. No discrimination shall be practiced or asserted against any applicant for or recipient of care and services under this part on the basis of race, color, or national origin, and the furnishing of care and services under this part to any applicant or recipient thereof shall not be delayed or denied on the basis of race, color, or national origin.

History: En. Sec. 16, Ch. 325, L. 1967; R.C.M. 1947, 71-1526.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

53-6-106. Health care facility standards — definitions. (1) For purposes of 53-6-106 through 53-6-108, the following definitions apply:

(a) "Department" means the department of social and rehabilitation services.

(b) "Health care facility" means a health care facility as defined in 50-5-101.

(2) The department and the department of health and environmental sciences may enter into agreements with appropriate federal agencies for the purpose of certifying health care facilities for the Montana medicaid program.

(3) The department of health and environmental sciences shall adopt rules prescribing minimum standards for the maintenance and operation of health care facilities, including standards for the quality of care provided by those facilities receiving reimbursement under the Montana medicaid program. These standards must include, as a minimum, those requirements imposed upon health care facilities by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and by the implementing regulations contained in 42 CFR 430, et seq., as may be amended. The authority to prescribe standards and adopt rules under 53-6-106 through 53-6-108 is in addition to the authority granted to the department of health and environmental sciences pursuant to Title 50, chapter 5.

(4) Standards adopted by the department of health and environmental sciences may include but are not limited to requirements in the following areas: staffing, fire protection, health and safety, food and nutrition, environmental and sanitation, administration, admission policies, patient care planning, training, medication, health services, rehabilitation services, and social services and activities.

History: En. Sec. 4(1) thru (4), Ch. 711, L. 1989.

53-6-107. Sanctions — penalties. (1) The department may suspend, terminate, or refuse to renew an agreement with a health care facility that has failed to meet the requirements for certification adopted for the Montana medicaid program under 53-6-106 through 53-6-108. The department may also impose sanctions in the form of denial of medicaid payments for new admissions or other penalties as described in 53-6-111.

(2) The department may impose a civil monetary penalty, with interest not to exceed 12% per annum, for each day that a facility is substantially out of compliance with standards adopted by the department of health and environmental sciences under the authority of Title 50, chapter 5, or 53-6-106 through 53-6-108. Penalties must be collected by the department and may be applied to the protection of the health and property of residents of health care facilities that the department finds deficient, including payment for the costs of relocation of residents to other facilities, operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost.

(3) The department may appoint temporary management personnel to oversee the operation of the facility and to assure the health and safety of the facility's residents if there is a need for temporary management because:

(a) an orderly closure of the facility is necessary; or

(b) improvements are being made to bring the facility into compliance with applicable standards.

(4) The department shall, in the case of an emergency, close the facility or transfer residents in the facility to other facilities, or both.

History: En. Sec. 4(5) thru (8), Ch. 711, L. 1989.

53-6-108. Rules governing sanctions or remedies. The department shall adopt rules governing the application of sanctions or remedies imposed under 53-6-107, the amounts of any fines, and the severity of each of these sanctions or remedies. The rules must be designed for the imposition of incrementally more severe fines for repeated or uncorrected deficiencies. The civil penalty for violation of the standards adopted by the department of health and environmental sciences or those federal standards established in 53-6-106 may not exceed $1,000 for each day the deficiency remains uncorrected. A health care facility aggrieved by an action of the department may request a hearing pursuant to Title 2, chapter 4, part 6.

History: En. Sec. 4(9), Ch. 711, L. 1989.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Medicaid rules, 53-6-113.

53-6-109 reserved.

53-6-110. Report and recommendations to legislature on medicaid funding. (1) At the commencement of each legislative session, the department of social and rehabilitation services shall submit a report, as provided in 5-11-210, to the legislature concerning medicaid funding for the next biennium. This report must include at least the following elements:

(a) analysis of past and present funding levels for the various categories and types of health services eligible for medicaid reimbursement;

(b) projected increased medicaid funding needs for the next biennium. These projections shall identify the effects of projected population growth and demographic patterns on at least the following elements:

(i) trends in unit costs for services, including inflation;

(ii) trends in use of services;

(iii) trends in medicaid recipient levels; and

(iv) the effects of new and projected facilities and services for which a need has been identified in the state health plan prepared pursuant to 42 U.S.C. 300m-2(a)(2).

(2) As an integral part of the report, the department of social and rehabilitation services shall present a recommendation of funding levels for the medicaid program. The recommendation need not be consistent with the state health plan.

(3) In arriving at the projections and recommendation required in subsections (1) and (2), the department of social and rehabilitation services shall consult with the department of health and environmental sciences.

(4) In making its appropriations for medicaid funding, the legislature shall specify the portions of medicaid funding anticipated to be allocated to specific categories and types of health care services.

History: En. Sec. 8, Ch. 329, L. 1983; amd. Sec. 39, Ch. 112, L. 1991.

Compiler's Comments

1991 Amendment: Near middle of (1) inserted reference to 5-11-210; and at beginning of (2) substituted "As an integral part of" for "In addition to". Amendment effective March 20, 1991.

53-6-111. Department charged with general administration of medical assistance — adoption of rules to punish fraud. (1) The department of social and rehabilitation services is hereby authorized and empowered to administer and supervise a vendor payment program of medical assistance under the powers, duties, and functions provided in chapter 2 of this title, as amended, and as contemplated by the provisions of Title XIX of the federal Social Security Act.

(2) The department shall adopt rules establishing a system of penalties and sanctions applicable to providers of medical assistance services and supplies who engage in fraudulent, abusive, or improper activities. The department shall define by rule those activities which are fraudulent, abusive, or improper.

(3) The penalties or sanctions imposed include but are not limited to:

(a) required courses of education in the rules governing the medicaid program;

(b) withholding of payments to offset previous improper payments to a provider;

(c) suspension of payments to a provider pending resolution of a dispute involving fraudulent, abusive, or improper activities;

(d) suspension of participation in the program for a specified period of time; and

(e) permanent termination of participation in the medical assistance program.

(4) The department is entitled to recover from a provider all amounts paid as a result of fraudulent, abusive, or improper activities, together with interest at the rate set by 15-30-142 for tax deficiencies from the date of such payment.

(5) In all cases in which a penalty or sanction may be imposed, a provider is entitled to a hearing under the provisions of Title 2, chapter 4, part 6.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47, 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(1); amd. Sec. 1, Ch. 276, L. 1979.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Fraud, 28-2-404 through 28-2-406.

False claims to public agencies, 45-7-210.

Community-based long-term care facilities — powers and duties of Department, 53-6-402.

53-6-112. Department to print and distribute copies of part and certain forms. The department of social and rehabilitation services shall have printed and distribute copies of this part to all county welfare departments and shall prescribe the form of and print and supply to the county welfare departments blanks of applications, reports, and such other forms as may be necessary in relation to medical assistance.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(4).

53-6-113. Department to adopt rules. (1) The department of social and rehabilitation services shall adopt appropriate rules necessary for the administration of the Montana medicaid program as provided for in this part and as may be required by federal laws and regulations governing state participation in medicaid under Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as amended.

(2) The department shall adopt rules as are necessary to further define for the purposes of this part the services provided under 53-6-101 and to provide that services utilized are medically necessary and that these services are the most efficient and cost effective available. The rules may establish the amount, scope, and duration of services provided under the Montana medicaid program, including the items and components constituting the services.

(3) The department shall establish by rule the rates for reimbursement of services provided under this part. The department may in its discretion set such rates of reimbursement as it determines necessary for the purposes of the program. In establishing rates of reimbursement, the department may consider but is not limited to:

(a) the availability of appropriated funds;

(b) the actual cost of services;

(c) the quality of services;

(d) the professional knowledge and skills necessary for the delivery of services; and

(e) the availability of services.

(4) The department shall specify by rule those professionals who may deliver or direct the delivery of particular services.

(5) The department may provide by rule for payment by a recipient of a portion of the reimbursements established by the department for services provided under this part.

(6) The department may adopt rules consistent with this part to govern eligibility for the Montana medicaid program. Rules may include but are not limited to financial standards and criteria for income and resources, treatment of resources, nonfinancial criteria, family responsibilities, residency, application, termination, definition of terms, and confidentiality of applicant and recipient information.

(7) The department may adopt rules limiting eligibility based on criteria more restrictive than that provided in 53-6-131 if required by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, or if funds appropriated are not sufficient to provide medical care for all eligible persons.

(8) The department may adopt rules necessary for the administration of medicaid managed-care systems. Rules to be adopted may include but are not limited to rules concerning:

(a) participation in managed care;

(b) selection and qualifications for providers of managed care; and

(c) standards for the provision of managed care.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(6); amd. Sec. 4, Ch. 310, L. 1989; amd. Sec. 5, Ch. 711, L. 1989; amd. Sec. 4, Ch. 460, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (8) authorizing Department to adopt rules to administer Medicaid managed-care systems. Amendment effective July 1, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Health care facility rules, 53-6-108.

53-6-114. Rules of department binding on county welfare departments. All rules of the department of social and rehabilitation services made under this part shall be binding upon the county departments of public welfare.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(5).

53-6-115. Contracts with other agencies. The department of social and rehabilitation services may by suitable rules provide for contracting with any state or private agency for processing and payment of claims under such program of medical assistance, and the department shall have the authority to contract with one or more private or state agencies to provide any or all of the enumerated medical services.

History: En. Sec. 5, Ch. 325, L. 1967; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1515.

53-6-116. Medicaid managed care. (1) The department of social and rehabilitation services, in its discretion, may develop managed-care systems for medicaid recipients.

(2) A managed-care system is a program organized to serve the medical needs of medicaid recipients in an efficient and cost-effective manner by managing the receipt of medical services for a geographical or otherwise defined population of recipients through appropriate health care professionals.

(3) The provision of medicaid services through managed-care systems is not subject to the limitations provided in 53-6-101, 53-6-103, and 53-6-104.

History: En. Sec. 1, Ch. 460, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 460, L. 1991, provided that this section is effective July 1, 1991.

53-6-117. Participation requirements. (1) The department of social and rehabilitation services may require medicaid recipients to participate in a managed-care system.

(2) Recipients who are required by the department to participate in a managed-care system shall participate as required in order to remain eligible for medicaid.

(3) The department may require the participation of medicaid recipients in managed-care systems based upon geographical, financial, social, medical, and other factors as the department may determine are relevant to the development and efficient management of managed-care systems.

History: En. Sec. 2, Ch. 460, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 460, L. 1991, provided that this section is effective July 1, 1991.

53-6-118 through 53-6-120 reserved.

53-6-121. County department charged with local administration of medical assistance. The county department of public welfare shall be charged with the local administration and supervision of medical assistance subject to the powers, duties, and functions prescribed for the county department in chapter 2 of this title.

History: En. Sec. 1, Ch. 325, L. 1967; amd. Secs. 47 and 48, Ch. 121, L. 1974; R.C.M. 1947, 71-1511(2).

Cross-References

State assumption of county public assistance programs, Title 53, ch. 2, part 8.

53-6-122 through 53-6-130 reserved.

53-6-131. Eligibility requirements. (1) Medical assistance under the Montana medicaid program may be granted to a person who is determined by the department of social and rehabilitation services to be eligible as follows:

(a) The person receives or is considered to be receiving supplemental security income benefits under Title XVI of the federal Social Security Act (42 U.S.C. 1381, et seq.) or aid to families with dependent children under Title IV of the federal Social Security Act (42 U.S.C. 601, et seq.).

(b) The person would be eligible for assistance under a program described in subsection (1)(a) if he were to apply for such assistance.

(c) The person is in a medical facility that is a medicaid provider and, but for residence in the facility, he would be receiving assistance under one of the programs in subsection (1)(a).

(d) The person is under 19 years of age and meets the conditions of eligibility in the state plan for aid to families with dependent children, other than with respect to school attendance.

(e) The person is under 21 years of age and in foster care under the supervision of the state or was in foster care under the supervision of the state and has been adopted as a hard-to-place child.

(f) The person meets the nonfinancial criteria of the categories in subsections (1)(a) through (1)(e) and:

(i) the person's income does not exceed the medically needy income level specified for federally aided categories of assistance and his resources are within the resource standards of the federal supplemental security income program; or

(ii) the person, while having income greater than the medically needy income level specified for federally aided categories of assistance, has an adjusted income level, after incurring medical expenses, that does not exceed the medically needy income level specified for federally aided categories of assistance and his resources are within the resource standards of the federal supplemental security income program.

(g) The person is a qualified pregnant woman or child as defined in 42 U.S.C. 1396d(n).

(2) The Montana medicaid program shall pay for the premiums necessary for participation in the medicare program and may, within the discretion of the department, pay all or a portion of the medicare deductibles and coin-

surance for a medicare-eligible person or for a qualified disabled and working individual, as defined in section 6408(d)(2) of the federal Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, who:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program.

(3) The department may pay a medicaid-eligible person's expenses for premiums, coinsurance, and similar costs for health insurance or other available health coverage, as provided in 42 U.S.C. 1396b(a)(1).

(4) The department, under the Montana medicaid program, may provide, if a waiver is not available from the federal government, medicaid and other assistance mandated by Title XIX of the federal Social Security Act (42 U.S.C. 1396, et seq.), as may be amended, and not specifically listed in this part to categories of persons that may be designated by the act for receipt of assistance.

(5) Notwithstanding any other provision of this chapter, medical assistance must be provided to infants and pregnant women whose family income does not exceed 133% of the federal poverty threshold, as provided in 42 U.S.C. 1396a(a)(10)(A)(ii)(IX) and 42 U.S.C. 1396a(l)(2)(A)(i).

(6) A person described in subsection (5) must be provided continuous eligibility for medical assistance, as authorized in 42 U.S.C. 1396a(e)(5) through a(e)(7).

History: En. Sec. 6, Ch. 325, L. 1967; amd. Sec. 2, Ch. 261, L. 1971; amd. Sec. 1, Ch. 20, L. 1973; amd. Sec. 2, Ch. 277, L. 1973; amd. Sec. 38, Ch. 37, L. 1977; R.C.M. 1947, 71-1516; amd. Sec. 1, Ch. 399, L. 1981; amd. Sec. 155, Ch. 370, L. 1987; amd. Sec. 1, Ch. 310, L. 1989; amd. Sec. 11, Ch. 649, L. 1989; amd. Sec. 2, Ch. 388, L. 1991; amd. Sec. 5, Ch. 634, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 388 in (2), at end of introductory clause, inserted reference to qualified disabled and working individual; and inserted (3) allowing Department to pay certain health insurance costs. Amendment effective July 1, 1991.

Chapter 634 deleted former (1)(g) that read: "(g) The person is under 1 year of age and:

(i) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(ii) has resources that do not exceed standards the department determines reasonable for purposes of the program"; deleted former (2) that read: "(2) A person who is pregnant is eligible for pregnancy-related medical assistance under the Montana medicaid program if she:

(a) has income that does not exceed income standards as may be required by the federal Social Security Act; and

(b) has resources that do not exceed standards the department determines reasonable for purposes of the program"; inserted (1)(g) providing permissive services for a qualified pregnant woman or a child; in (5), after "exceed", inserted "133% of" and at end inserted citation to 42 U.S.C. 1396a(1)(2)(A)(i); inserted (6) providing for continuous eligibility for a person described in subsection (5); and made minor changes in style. Amendment effective June 30, 1991.

Termination Repealed: Section 7, Ch. 634, L. 1991, repealed sec. 15, Ch. 649, L. 1989, which terminated subsection (5) on June 30, 1991. Repealer effective June 30, 1991.

Cross-References

Montana Initiative for the Abatement of Mortality in Infants (MIAMI) Act, Title 50, ch. 19, part 3.

Duties of Advisory Council, 50-19-312.

53-6-132. Application for assistance. Application for assistance under this part shall be made to the office of the county department in the county in which the person is residing. The application shall be presented in the manner on the form prescribed by the department of social and rehabilitation services. All individuals wishing to apply shall have the opportunity to do so.

History: En. Sec. 8, Ch. 325, L. 1967; R.C.M. 1947, 71-1518.

Cross-References

Fraudulently obtaining public assistance — theft, 53-2-107.

53-6-133. Investigation and determination of eligibility. (1) The county department shall promptly investigate and determine the eligibility of each applicant under this part in accordance with the rules of the department of social and rehabilitation services. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this part, and aid shall be furnished promptly to eligible persons. Each applicant shall receive written notice of the decision concerning his application, and right of appeal shall be secured to the applicant under the procedures of 53-2-606.

(2) The county departments of public welfare and the department of social and rehabilitation services are hereby authorized to accept the federal social security administration's determination of eligibility for supplemental security income, Title XVI of the Social Security Act, as qualifying such eligible individuals to receive medical assistance under this part.

History: En. Sec. 10, Ch. 325, L. 1967; amd. Sec. 1, Ch. 181, L. 1974; amd. Sec. 1, Ch. 327, L. 1977; R.C.M. 1947, 71-1520; amd. Sec. 2, Ch. 310, L. 1989.

Cross-References

Contested cases, Title 2, ch. 4, part 6.

53-6-134. Extension of eligibility for medical assistance to persons terminated from aid to families with dependent children. (1) In accordance with section 1925 of Title XIX of the Social Security Act (42 U.S.C. 1396r-6), the department of social and rehabilitation services shall provide for the extension of eligibility for medical assistance to persons who lose eligibility for aid to families with dependent children due to:

(a) increased hours or income from employment; or

(b) loss of federally prescribed earned income disregards.

(2) In providing for the extension of eligibility for medical assistance under subsection (1), the department may provide for health insurance or other health coverage in accordance with subsections 1925(a)(4)(B) and 1925(b)(4)(C) of Title XIX of the Social Security Act (42 U.S.C. 1396r-6(a)(4)(B) and 42 U.S.C. 1396r-6(b)(4)(C)) and may exercise the other options contained in section 1925 of Title XIX of the Social Security Act (42 U.S.C. 1396r-6) regarding the provision of medical assistance.

History: En. Sec. 1, Ch. 453, L. 1989.

53-6-135 through 53-6-138 reserved.

53-6-139. Terminated. Sec. 9, Ch. 616, L. 1989.

History: En. Sec. 2, Ch. 616, L. 1989.

53-6-140 reserved.

53-6-141. Repealed. Sec. 8, Ch. 711, L. 1989.

History: En. Sec. 7, Ch. 325, L. 1967; amd. Sec. 3, Ch. 261, L. 1971; amd. Sec. 2, Ch. 20, L. 1973; R.C.M. 1947, 71-1517; amd. Sec. 1, Ch. 562, L. 1979; amd. Sec. 112, Ch. 370, L. 1987; amd. Sec. 3, Ch. 310, L. 1989.

53-6-142. Periodic review of assistance. All medical assistance cases approved under this part shall be reviewed as often as shall be required under the rules of the department of social and rehabilitation services.

History: En. Sec. 11, Ch. 325, L. 1967; R.C.M. 1947, 71-1521.

53-6-143. Limitations on liens and recoveries. (1) An applicant for or recipient of assistance may not be required to execute an agreement creating a lien on his real property.

(2) A lien may be imposed against the real or personal property of an individual prior to his death for recovery of medical assistance paid or to be paid on his behalf under this chapter only:

(a) pursuant to a judgment of a court for recovery of assistance incorrectly paid on behalf of the recipient; or

(b) on a third-party recovery as provided in 53-2-612.

(3) (a) The department may recover medical assistance correctly paid on behalf of a recipient only:

(i) as provided in 53-2-611, except that it may not recover for any assistance paid on behalf of a recipient for services provided before he reached age 65; or

(ii) as provided in 53-2-612.

(b) The department may recover under 53-2-611 only:

(i) after the death of the recipient's surviving spouse, if any; and

(ii) if there is no surviving child of the recipient who is under age 21, blind, or permanently and totally disabled.

(4) Recoveries must be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this section are hereby extended to provide for the recovery of all medical assistance paid under this part and likewise to all medical aid to the aged assistance paid by the department of social and rehabilitation services during the period of time July 1, 1965, through June 30, 1967.

History: En. Sec. 14, Ch. 325, L. 1967; amd. Sec. 1, Ch. 249, L. 1969; amd. Sec. 1, Ch. 279, L. 1974; amd. Sec. 5, Ch. 379, L. 1977; R.C.M. 1947, 71-1524; amd. Sec. 2, Ch. 482, L. 1989.

Cross-References

Liens, Title 71, ch. 3.

Claims against estate, Title 72, ch. 3, part 8.

53-6-144. Relative's responsibility. The provisions of other parts of this title, as amended, notwithstanding, the only relatives that can be held responsible for payment of medical assistance under the program are the husband or wife of the individual, the parents of children under age 18, and the parents of blind or disabled persons over age 18.

History: En. Sec. 15, Ch. 325, L. 1967; amd. Sec. 15, Ch. 423, L. 1971; R.C.M. 1947, 71-1525.

Cross-References

Liability for acts or debts of spouse, 40-2-106.

When parent liable for necessaries supplied to child, 40-6-215.

Duty of child to support indigent parents, 40-6-301.

Recovery from recipient's estate, 53-2-611.

53-6-145 through 53-6-149 reserved.

53-6-150. Statutory appropriation of donated funds. (1) The department of social and rehabilitation services may receive private funds and nonfederal and nonstate public funds for its medical assistance programs. Donated funds must be matched with federal funds whenever possible.

(2) Funds donated to the department for its medical assistance programs are statutorily appropriated to the department as provided in 17-7-502.

History: En. Sec. 1, Ch. 164, L. 1987.

53-6-151 through 53-6-160 reserved.

53-6-161. *(Temporary)* **Purpose.** The legislature declares that it is the purpose of 53-6-161 through 53-6-164 to:

(1) minimize inappropriate medicaid admissions of the elderly and disabled to skilled and intermediate nursing care facilities;

(2) make it possible for the elderly and disabled who do not require the degree of care provided in a long-term care facility to receive necessary care in a personal-care facility; and

(3) provide the most efficient and effective use of public funds in the delivery of medicaid services to the elderly and disabled. *(Terminates July 1, 1993—sec. 8, Ch. 614, L. 1991.)*

History: En. Sec. 1, Ch. 614, L. 1991.

Compiler's Comments

Effective Date: Section 7(1), Ch. 614, L. 1991, provided that this section is effective July 1, 1991.

Termination: Section 8, Ch. 614, L. 1991, provided: "[This act] terminates July 1, 1993."

53-6-162. *(Temporary)* **Definitions.** As used in 53-6-161 through 53-6-164, unless the context requires otherwise, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(2) "Disabled" means an individual who is disabled as defined in 42 U.S.C. 1382c.

(3) "Elderly" means a person who is 65 years of age or older.

(4) "Personal-care facility" means a facility licensed under 50-5-227 to operate as a personal-care facility. *(Terminates July 1, 1993—sec. 8, Ch. 614, L. 1991.)*

History: En. Sec. 2, Ch. 614, L. 1991.

Compiler's Comments

Effective Date: Section 7(1), Ch. 614, L. 1991, provided that this section is effective July 1, 1991.

Termination: Section 8, Ch. 614, L. 1991, provided: "[This act] terminates July 1, 1993."

53-6-163. *(Temporary)* **Waiver of federal requirements.** (1) Prior to December 31, 1991, the department shall seek a waiver from the U.S. secretary of health and human services, in accordance with 42 U.S.C. 1396n, to establish a pilot program to test the feasibility of providing medicaid reimbursement for services to the elderly and disabled in personal-care facilities.

(2) Contingent upon approval of the waiver provided in subsection (1), the department shall establish procedures to:

(a) select personal-care facilities to participate in the pilot program, based on criteria contained in the request for proposal;

(b) limit the pilot program to a total of 100 beds in at least four personal-care facilities that represent at least three different bed-size classes;

(c) provide medicaid reimbursement for services to residents in each personal-care facility who meet the requirements for eligibility adopted under subsection (3); and

(d) record and evaluate:

(i) reimbursement levels for services in personal-care facilities;

(ii) the cost of providing personal-care facility services;

(iii) preadmission screening procedures;

(iv) medicaid service utilization;

(v) consumer satisfaction; and

(vi) the impact on the demand for services.

(3) The department shall develop eligibility criteria consistent with the requirements of Title XIX of the federal Social Security Act. *(Terminates July 1, 1993—sec. 8, Ch. 614, L. 1991.)*

History: En. Sec. 3, Ch. 614, L. 1991.

Compiler's Comments

Effective Date: Section 7(1), Ch. 614, L. 1991, provided that this section is effective July 1, 1991.

Termination: Section 8, Ch. 614, L. 1991, provided: "[This act] terminates July 1, 1993."

53-6-164. *(Temporary)* **Rulemaking.** The department may adopt rules to implement 53-6-161 through 53-6-164. *(Terminates July 1, 1993—sec. 8, Ch. 614, L. 1991.)*

History: En. Sec. 4, Ch. 614, L. 1991.

Compiler's Comments

Effective Date: Section 7(1), Ch. 614, L. 1991, provided that this section is effective July 1, 1991.

Termination: Section 8, Ch. 614, L. 1991, provided: "[This act] terminates July 1, 1993."

Part 2

Renal Disease Treatment Program (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-6-201. Renumbered 50-44-101.

53-6-202. Renumbered 50-44-102.

Part 3

Montana State Hospital (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-6-301. Renumbered 53-21-601.

53-6-302. Repealed. Sec. 1, Ch. 80, L. 1987.

53-6-303. Renumbered 53-21-602.

53-6-304. Renumbered 53-21-603.

Histories of Repealed Sections:

53-6-302. En. Sec. 18, Ch. 199, L. 1965; amd. Sec. 6, Ch. 320, L. 1967; R.C.M. 1947, 80-1702; amd. Sec. 1, Ch. 285, L. 1981; amd. Sec. 14, Ch. 361, L. 1983.

Part 4

Community-Based Long-Term Care Medicaid Services

53-6-401. Definitions. As used in this part, the following definitions apply:

(1) "Community-based medicaid services" means those long-term medical, habilitative, rehabilitative, and other services that are available to medicaid-eligible persons in a community setting or in a person's home as a substitute for medicaid services provided in long-term care facilities and that are allowed under the state medicaid plan in order to avoid institutionalization.

(2) "Department" means the department of social and rehabilitation services as provided for in Title 2, chapter 15, part 22.

(3) "Long-term care facilities" means facilities that are certified by the department of health and environmental sciences to provide skilled or intermediate nursing care services, including intermediate nursing care services for the developmentally disabled.

(4) "Long-term care medicaid services" means community-based medicaid services and those medicaid services provided in long-term care facilities.

(5) "Long-term care preadmission screening and resident review" means an evaluation that results in a determination as to whether a person requires the services provided in long-term care facilities and whether community-based medicaid services would be an appropriate substitute for medicaid services that are available in long-term care facilities.

History: En. Sec. 1, Ch. 516, L. 1983; amd. Sec. 6, Ch. 711, L. 1989.

Cross-References

Certified health facilities, Title 50, ch. 5.

53-6-402. Community-based long-term care facilities — powers and duties of department. (1) The department may operate, for persons eligible for medicaid, a program of community-based services as an alternative to long-term care facility services in accordance with the provisions of Title XIX of the Social Security Act, as may be amended.

(2) The department may conduct long-term care preadmission screenings and resident reviews. Long-term care preadmission screenings and resident reviews are required for all medicaid-eligible persons entering long-term care facilities and community-based services and for all persons who become eligible for medicaid after entering long-term care facilities, before payment for services in such settings are authorized under medicaid. Preadmission screenings and resident review of persons not applying for medical assistance under this part must be on a voluntary basis, except as required under the Social Security Act.

(3) The department shall annually advise medical doctors and current residents of long-term care facilities of the program provided in subsection (1).

(4) The department may adopt rules necessary to implement a program of community-based medicaid services and to establish a system of long-term care preadmission screenings and resident reviews as part of that program.

History: En. Secs. 2 thru 5, Ch. 516, L. 1983; amd. Sec. 7, Ch. 711, L. 1989.

CHAPTER 7

VOCATIONAL REHABILITATION

Part 1 — General Vocational Rehabilitation

53-7-101. Definitions.
53-7-102. Powers and duties of department.
53-7-103. Department to cooperate with federal government.
53-7-104. Repealed.
53-7-105. Eligibility.
53-7-106. Hearings.
53-7-107. Repealed.
53-7-108. Provision of services — financial responsibility for services.
53-7-109. Administration of vocational rehabilitation programs — applicability.

Part 2 — Sheltered Workshops

53-7-201. Legislative findings and purpose.
53-7-202. Definitions.
53-7-203. Purchase of services.
53-7-204. Federal and other aid.
53-7-205. Eligibility for services.
53-7-206. Rulemaking.

Part 3 — Vocational Rehabilitation of the Blind

53-7-301. Definitions.
53-7-302. Administration.

53-7-303. Cooperation with federal government.
53-7-304. Repealed.
53-7-305. Repealed.
53-7-306. Eligibility for services.
53-7-307. Repealed.
53-7-308. Repealed.
53-7-309. Repealed.
53-7-310. Provision of services — financial responsibility for services.
53-7-311 through 53-7-313 reserved.
53-7-314. Hearings.
53-7-315. Rulemaking authority.

Chapter Cross-References

Veterans' public employment preference, Title 39, ch. 29.

Handicapped persons' public employment preference, Title 39, ch. 30.

Part 1

General Vocational Rehabilitation

53-7-101. Definitions. Unless the context requires otherwise, in this part the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(2) "Maintenance" means money payments made in accordance with 53-7-108.

(3) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

(4) "Person with an employment handicap" means the same as "individual with handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(8)(A)), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.

(5) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce the employment handicap of a person within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(6) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(7) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with employment

handicaps. Such barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(8) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with an employment handicap to become independent and productive or employable.

(9) "Rehabilitation training" means training provided to a person with an employment handicap to rehabilitate the person's employment handicap; including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(10) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with an employment handicap to enable the person insofar as possible to become independent and productive or employable.

(11) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person.

History: En. Sec. 1, Ch. 74, L. 1947; amd. Sec. 1, Ch. 218, L. 1959; amd. Sec. 1, Ch. 53, L. 1961; amd. Sec. 1, Ch. 192, L. 1971; Sec. 41-801, R.C.M. 1947; amd. and redes. 71-1801 by Sec. 10, Ch. 121, L. 1974; R.C.M. 1947, 71-2101; amd. Sec. 1, Ch. 396, L. 1989.

53-7-102. Powers and duties of department. The department:

(1) shall adopt rules necessary for the administration of this part. Rules adopted may include but are not limited to the provision of services, individual service plans, eligibility for services, application, service goals and design, quality of services, provider relationships, program standards, program staffing, staff training, provider accounting procedures, confidential information, recipient grievance procedures, hearings, and definitions necessary to carry out this part;

(2) may take any other action it determines necessary or appropriate to carry out the purposes of this part;

(3) may cooperate with other departments and agencies and institutions, both public and private, in providing for vocational rehabilitation of persons with employment handicaps, in studying the problems involved in vocational rehabilitation, and in establishing, developing, and providing programs, facilities, and services;

(4) may conduct research and compile statistics relating to the vocational rehabilitation of persons with employment handicaps; and

(5) may accept and use gifts to carry out this part.

History: En. Sec. 3, Ch. 74, L. 1947; amd. Sec. 3, Ch. 53, L. 1961; amd. Sec. 12, Ch. 93, L. 1969; Sec. 41-803, R.C.M. 1947; amd. and redes. 71-1802 by Sec. 11, Ch. 121, L. 1974; R.C.M. 1947, 71-2102; amd. Sec. 2, Ch. 396, L. 1989.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-7-103. Department to cooperate with federal government. The department shall cooperate, pursuant to agreements with the federal government, in carrying out the purposes of the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, and may adopt methods of administration as required by the federal government for state participation in programs funded under the federal act.

History: En. Sec. 5, Ch. 74, L. 1947; amd. Sec. 2, Ch. 218, L. 1959; amd. Sec. 5, Ch. 53, L. 1961; Sec. 41-805, R.C.M. 1947; amd. and redes. 71-1803 by Sec. 12, Ch. 121, L. 1974; R.C.M. 1947, 71-2103; amd. Sec. 3, Ch. 396, L. 1989.

53-7-104. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 6, Ch. 74, L. 1947; amd. Sec. 3, Ch. 218, L. 1959; Sec. 41-806, R.C.M. 1947; amd. and redes. 71-1804 by Sec. 13, Ch. 121, L. 1974; R.C.M. 1947, 71-2104.

53-7-105. Eligibility. A person with an employment handicap is eligible for vocational rehabilitation services if the department, after full investigation, determines that the person may become employable or achieve accepted vocational objectives through the provision of vocational rehabilitation services that are made available as provided for in 53-7-108.

History: En. Sec. 8, Ch. 74, L. 1947; amd. Sec. 3, Ch. 192, L. 1971; Sec. 41-808, R.C.M. 1947; amd. and redes. 71-1805 by Sec. 14, Ch. 121, L. 1974; R.C.M. 1947, 71-2105; amd. Sec. 1, Ch. 55, L. 1981; amd. Sec. 4, Ch. 396, L. 1989.

53-7-106. Hearings. A person applying for or receiving vocational rehabilitation services who is aggrieved by any action or inaction of the department is entitled to a fair hearing in accordance with the rules adopted by the department.

History: En. Sec. 10, Ch. 74, L. 1947; amd. Sec. 4, Ch. 192, L. 1971; Sec. 41-810, R.C.M. 1947; amd. and redes. 71-1806 by Sec. 15, Ch. 121, L. 1974; R.C.M. 1947, 71-2106; amd. Sec. 5, Ch. 396, L. 1989.

Cross-References

Contested case defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Contested cases, Title 2, ch. 4, part 6.

53-7-107. Repealed. Sec. 1, Ch. 32, L. 1987.

History: En. Sec. 12, Ch. 74, L. 1947; Sec. 41-812, R.C.M. 1947; amd. and redes. 71-1807 by Sec. 16, Ch. 121, L. 1974; R.C.M. 1947, 71-2107.

53-7-108. Provision of services — financial responsibility for services. (1) The department, in accord with this part and the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, may provide to persons determined eligible under 53-7-105 any vocational rehabilitation services listed in 53-7-101 that are determined by the department to be appropriate and necessary for the person's vocational rehabilitation.

(2) The following vocational rehabilitation services are available without cost to an eligible person:

(a) counseling and guidance;

(b) diagnostic evaluation; and

(c) placement.

(3) In addition to the services listed in subsection (2), the department may pay the cost of other vocational rehabilitation services for an eligible person to the extent that the department determines that the person is without sufficient financial resources to pay the cost of such services.

(4) The department may in its discretion provide maintenance payments to a recipient of vocational rehabilitation services if the department determines that the recipient is without sufficient financial resources to:

(a) obtain basic necessities at a level the department determines is appropriate; and

(b) pay the cost of vocational rehabilitation services to be provided to the person.

History: En. Sec. 6, Ch. 396, L. 1989.

53-7-109. Administration of vocational rehabilitation programs — applicability. (1) Those divisions of the department that have programs for the provision of vocational rehabilitation services may share administrative personnel, operations, and policies so as to assure uniform administration necessary under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended. Within the department, the vocational rehabilitation services provided under the federal act must be administered in such a way that they are kept separate and independent from other programs, except as provided in section 15, Chapter 396, Laws of 1989.

(2) This section applies to all programs and services in Title 53, chapter 7, administered by the department with funds provided under the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended.

History: En. Sec. 14, Ch. 396, L. 1989.

Part 2

Sheltered Workshops

53-7-201. Legislative findings and purpose. (1) The purpose of this part is to encourage the development and improvement of supervised work programs and support services for persons with severe disabilities.

(2) Supervised work programs and support services should be available to provide persons with severe disabilities the skills and means by which they

may lead socially and vocationally productive lives so they can be integrated into society.

(3) The state may encourage the establishment of and provide funding for supervised work programs and support services for persons with severe disabilities.

History: **En. Sec. 1, Ch. 322, L. 1973; R.C.M. 1947, 41-816; amd. Sec. 1, Ch. 267, L. 1989.**

53-7-202. Definitions. (1) "Department" means the department of social and rehabilitation services.

(2) "Severe disability" means a severe physical or mental impairment that seriously limits a person's functional capacities in respect to obtaining employment.

(3) "Sheltered employment" means a recognized program of rehabilitation, remunerative employment, or other occupational rehabilitating activity of an educational or therapeutic nature provided by a nonprofit sheltered workshop provider. Sheltered employment includes job skills and social skills training and remunerative employment.

(4) "Supervised work program" means a program providing guidance in learning and achieving the requirements of job performance through work activity, sheltered employment, and supported employment.

(5) "Supported employment" means competitive work in an intergrated work setting for a person with a severe disability who is in need of assistance in order to become employed or remain employed. Supported employment includes assessment, preplacement preparation, job development, job placement, job skills training, and support services.

(6) "Support services" means continuous or periodic job skills training provided to a person at a worksite to enable the person to perform work. Support services also include services away from the worksite that are necessary to allow a person with a severe disability to participate in a supervised work program, such as transportation, direction and assistance in functional skills, and counseling for family members.

(7) "Work activity" means therapeutic work-related activities provided by a nonprofit work activity center provider to persons whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic work-related activities include training in basic skills of living and any purposeful activity so long as work or production is not the main purpose.

History: **En. Sec. 2, Ch. 322, L. 1973; amd. Sec. 1, Ch. 333, L. 1974; amd. Sec. 10, Ch. 37, L. 1977; R.C.M. 1947, 41-817; amd. Sec. 2, Ch. 267, L. 1989.**

53-7-203. Purchase of services. (1) The department may purchase services under this part for persons with severe disabilities, to the extent that funds are appropriated and allocated, from any sheltered employment provider, work activity center, supported employment provider, or support services provider within Montana.

(2) An organization may receive funding under this part if it meets the standards and criteria promulgated by the department.

(3) The department shall adopt standards and criteria for the services purchased under this part to assure the quality and appropriateness of such services. The department may adopt standards and criteria of a nationally recognized accreditation organization for accrediting facilities providing services under this part.

History: En. Sec. 3, Ch. 322, L. 1973; amd. Sec. 2, Ch. 333, L. 1974; R.C.M. 1947, 41-818; amd. Sec. 3, Ch. 267, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Special state purchasing conditions — sheltered workshops, Title 18, ch. 5, part 1.

One-step licensing — inspection by other department, Title 50, ch. 8.

53-7-204. Federal and other aid. (1) The department may apply for and receive federal aid money or other funding available for the programs provided for under this part.

(2) Federal funds and other funding as may be available are appropriated to the department for use in administering the provisions of this part.

History: En. Sec. 4, Ch. 322, L. 1973; R.C.M. 1947, 41-819; amd. Sec. 4, Ch. 267, L. 1989.

53-7-205. Eligibility for services. (1) A person may receive services provided for under this part if the department determines that:

(a) the person has a severe disability;

(b) the person lacks social competence, mobility, experience, skills, training, or other characteristics of independence;

(c) the person is in need of services provided for under this part; and

(d) the needed services are available for that person.

(2) The receipt of services under this part by an eligible person shall be governed by an individual service plan developed in accordance with state and federal requirements.

History: En. Sec. 5, Ch. 267, L. 1989.

53-7-206. Rulemaking. For the purposes of providing supervised work programs and support services for persons with severe disabilities, the department may adopt rules necessary for the administration of such programs. Rules adopted may include but are not limited to rules regarding eligibility for services, certification of services, program staffing, staff training, service goals and design, quality of services, recipient placement procedures, individual service plans, recipient rights and privileges, recipient grievance procedures, fair hearings, provider relationships, provider accounting procedures, and definitions necessary to implement this part.

History: En. Sec. 6, Ch. 267, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 3

Vocational Rehabilitation of the Blind

Part Cross-References

Vending facilities for blind vendors, Title 18, ch. 5, part 4.

Assistance by employment placement officer, 20-8-116.

53-7-301. Definitions. As used in this part, the following definitions apply:

(1) (a) "Blindness" means a visual disability in which:

(i) a person's central visual acuity does not exceed 20/200 in the better eye with correcting lenses; or

(ii) a person's visual field at the widest diameter subtends an angle no greater than 20 degrees.

(b) The term includes any visual disability that, in the determination of the department, renders vision seriously defective or causes blindness.

(2) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(3) "Low vision" means a visual impairment that, even with correction, remains so severe as to make performance of daily tasks difficult.

(4) "Maintenance" means money payments made in accordance with 53-7-310.

(5) "Occupational license" means a license, permit, or other written authority required by any governmental unit to engage in an occupation.

(6) "Person with an employment handicap" means the same as "individual with handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(8)(A)), as may be amended. The term includes any individual who lacks occupation or vocational achievement due to the presence of a physical or mental disability.

(7) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce an employment handicap caused by blindness or low vision within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory medical conditions unless necessary to maintain a person's health in order to complete a rehabilitation plan.

(8) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(9) "Rehabilitation engineering" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by persons with blindness or low vision. Such barriers may exist in the areas of education, rehabilitation, employment, transportation, independent living, and recreation.

(10) "Rehabilitation plan" means a plan, developed with the participation of the recipient, for providing services to assist a person with blindness or low vision to become independent and productive or employable.

(11) "Rehabilitation training" means training provided to a person with blindness or low vision to rehabilitate the person's employment handicap, including but not limited to manual, preconditioning, prevocational, vocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(12) "Vocational rehabilitation" means the provision of vocational rehabilitation services to a person with blindness or low vision to enable the person insofar as possible to become independent and productive or employable.

(13) "Vocational rehabilitation services" means the following services: medical diagnosis, vocational guidance, vocational counseling, vocational placement, rehabilitation training, rehabilitation engineering, physical restoration, transportation, occupational licenses, customary occupational tools and equipment, maintenance, training books and materials, group facilities, family services, followup services, and any other goods and services provided for by rule and that the department determines to be necessary to rehabilitate the person.

History: (1), (2), (4) thru (10)En. Sec. 1, Ch. 167, L. 1955; amd. Sec. 33, Ch. 121, L. 1974; amd. Sec. 37, Ch. 37, L. 1977; Sec. 71-1401, R.C.M.; (3)En. 71-201.1 by Sec. 19, Ch. 121, L. 1974; Sec. 71-201.1, R.C.M. 1947; R.C.M. 1947, 71-201.1(1), 71-1401; amd. Sec. 7, Ch. 396, L. 1989.

53-7-302. Administration. The department may:

(1) cooperate with other departments and agencies and institutions, both public and private, in providing the services authorized by this part to persons with blindness or low vision; in studying the problems involved in vocational rehabilitation; and in establishing, developing, and providing programs, facilities, and services;

(2) conduct research and compile statistics relating to the provision of services to or the need of services for persons with blindness or low vision;

(3) accept and use gifts to carry out this part; and

(4) make rules and take any other action it determines necessary or appropriate to carry out this part.

History: En. Sec. 4, Ch. 167, L. 1955; amd. Sec. 34, Ch. 121, L. 1974; amd. Sec. 1, Ch. 237, L. 1974; R.C.M. 1947, 71-1404; amd. Sec. 4, Ch. 199, L. 1979; amd. Sec. 8, Ch. 396, L. 1989.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-7-303. Cooperation with federal government. The department shall cooperate, pursuant to agreements with the federal government, in carrying out the purposes of the federal Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, and may adopt methods of administration required by the federal government for state participation in programs funded under the federal act.

History: En. Sec. 5, Ch. 167, L. 1955; R.C.M. 1947, 71-1405; amd. Sec. 9, Ch. 396, L. 1989.

53-7-304. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 6, Ch. 167, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1406.

53-7-305. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 7, Ch. 167, L. 1955; amd. Sec. 35, Ch. 121, L. 1974; R.C.M. 1947, 71-1407.

53-7-306. Eligibility for services. A person with an employment handicap due to blindness or low vision is eligible for vocational rehabilitation services if the department, after full investigation, determines that the person may become employable or achieve accepted vocational objectives through the provision of vocational rehabilitation services that are made available as provided for in 53-7-310.

History: En. Sec. 8, Ch. 167, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1408; amd. Sec. 2, Ch. 55, L. 1981; amd. Sec. 10, Ch. 396, L. 1989.

53-7-307. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 9, Ch. 167, L. 1955; amd. Sec. 49, Ch. 121, L. 1974; R.C.M. 1947, 71-1409.

53-7-308. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 2, Ch. 523, L. 1979.

53-7-309. Repealed. Sec. 16, Ch. 396, L. 1989.

History: En. Sec. 3, Ch. 523, L. 1979.

53-7-310. Provision of services — financial responsibility for services. (1) The department, in accord with this part and the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), as may be amended, may provide to persons determined eligible under 53-7-306 any vocational rehabilitation services listed in 53-7-301 that are determined by the department to be appropriate and necessary for the person's vocational rehabilitation.

(2) The following vocational rehabilitation services are available without cost to a person eligible for visual services:

(a) counseling and guidance;

(b) diagnostic evaluation; and

(c) placement.

(3) In addition to the services listed in subsection (2), the department may pay the cost of other vocational rehabilitation services for an eligible person to the extent that the department determines that the person is without sufficient financial resources to pay the cost of such services.

(4) The department may in its discretion provide maintenance payments to a recipient of vocational rehabilitation services if the department determines that the recipient is without sufficient financial resources to:

(a) obtain basic necessities at a level the department determines is appropriate; and

(b) pay the cost of vocational rehabilitation services to be provided to the person.

History: En. Sec. 11, Ch. 396, L. 1989.

53-7-311 through 53-7-313 reserved.

53-7-314. Hearings. A person applying for or receiving vocational rehabilitation services who is aggrieved by any action or inaction of the department is entitled to a fair hearing in accordance with rules adopted by the department.

History: En. Sec. 12, Ch. 396, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-7-315. Rulemaking authority. The department shall adopt rules necessary for the administration of this part. Rules adopted may include but are not limited to the provision of services, individual service plans, eligibility for services, application, service goals and design, quality of services, provider relationships, program standards, program staffing, staff training, provider accounting procedures, confidential information, recipient grievance procedures, hearings, and definitions necessary to carry out this part.

History: En. Sec. 13, Ch. 396, L. 1989.

Cross-References

Contested case procedure, Title 2, ch. 4, part 6.

CHAPTER 8

ECONOMIC OPPORTUNITY

(Repealed. Sec. 63, Ch. 16, L. 1991)

Chapter Compiler's Comments

Histories of Repealed Sections:

53-8-101. En. Sec. 1, Ch. 263, L. 1965; R.C.M. 1947, 71-1601.

53-8-102. En. Sec. 2, Ch. 263, L. 1965; R.C.M. 1947, 71-1602.

53-8-103. En. Sec. 3, Ch. 263, L. 1965; R.C.M. 1947, 71-1603.

53-8-104. En. Sec. 4, Ch. 263, L. 1965; R.C.M. 1947, 71-1604.

CHAPTER 9

SERVICES FOR VICTIMS OF CRIME

Part 1 — The Crime Victims Compensation Act of Montana

53-9-101. Short title.
53-9-102. Legislative purpose and intent.
53-9-103. Definitions.
53-9-104. Powers and duties of division.
53-9-105. Rehabilitation of victims.
53-9-106. Attorneys' fees.
53-9-107. Public inspection and disclosure of division's records.
53-9-108. Limitation of benefit entitlements to proportionate share of available funds.
53-9-109. Crime victims compensation account.
53-9-110. Receipt of federal funds.
53-9-111. Penalty for fraudulently obtaining benefits.
53-9-112 through 53-9-120 reserved.
53-9-121. Application for compensation.
53-9-122. Informal hearings.
53-9-123. Evidence of condition.
53-9-124. Enforcement of division's orders — improper assertion of privilege.
53-9-125. Limitations on awards.
53-9-126. Tentative award of compensation.
53-9-127. Award of compensation.
53-9-128. Compensation benefits.
53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception.
53-9-130. Reconsideration and review of division's decisions.
53-9-131. Appeals.
53-9-132. Subrogation.
53-9-133. Effect of award on probation and parole of offender.

Chapter Cross-References

Treatment of victims and witnesses, Title 46, ch. 24.

Part 1

The Crime Victims Compensation Act of Montana

Part Cross-References

Availability of remedies — liability, Title 27, ch. 1.

53-9-101. Short title. This part may be cited as "The Crime Victims Compensation Act of Montana".

History: En. 71-2601 by Sec. 1, Ch. 527, L. 1977; R.C.M. 1947, 71-2601.

53-9-102. Legislative purpose and intent. It is the intent of the legislature of this state to provide a method of compensating those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death and those innocent citizens of this state who are injured or killed in a state that does not have a crime victims compensation program that covers out-of-state residents injured or killed in that state. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons and to coordinate victims' assistance programs.

History: En. 71-2602 by Sec. 2, Ch. 527, L. 1977; R.C.M. 1947, 71-2602; amd. Sec. 1, Ch. 354, L. 1991; amd. Sec. 1, Ch. 397, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 354 in first sentence, after "compensating", deleted "and assisting" and at end of second sentence inserted "and to coordinate victims' assistance programs".

Chapter 397 at end of first sentence inserted reference to victims injured or killed in a state that does not have a program to compensate out-of-state residents. Amendment effective July 1, 1991.

53-9-103. Definitions. As used in this part, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this part:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits, other than welfare benefits, or advantages for economic loss otherwise compensable under this part which the claimant has received or which is readily available to him from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this part;

(c) social security, medicare, and medicaid;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the claimant for loss which was sustained because of the criminally injurious conduct;

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this part shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this part are a primary source.

(h) a crime victims compensation program operated by the state in which the victim was injured or killed that compensates residents of this state injured or killed in that state.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state; however, criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the bodily injury or death occurred during the commission of an offense defined in Title 45 that requires the mental state of purposely as an element of the offense or the injury or death was inflicted by the driver of a motor vehicle who is found by the division, by a preponderance of the evidence, to have been operating the motor vehicle while under the influence, as that term is defined in 61-8-401; or

(d) is committed in a state without a crime victims compensation program that covers a resident of this state if the conduct meets the requirements in subsections (3)(b) and (3)(c).

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of crime control of the department of justice.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) his good faith effort to prevent criminally injurious conduct; or

(c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

History: En. 71-2603 by Sec. 3, Ch. 527, L. 1977; R.C.M. 1947, 71-2603; amd. Sec. 1, Ch. 367, L. 1979; amd. Sec. 1, Ch. 496, L. 1987; amd. Sec. 2, Ch. 68, L. 1989; amd. Sec. 2, Ch. 397, L. 1991.

Compiler's Comments

1991 Amendment: In definition of collateral source inserted (h) regarding benefits from a program operated in another state; in definition of criminally injurious conduct, at end of (c), inserted reference to injury or death inflicted by a person driving under the influence and inserted (d) regarding conduct in a state without a program that covers Montana residents; and made minor changes in style. Amendment effective July 1, 1991.

Cross-References

Crimes, Title 45.

53-9-104. Powers and duties of division. (1) The division shall:

(a) adopt rules to implement this part;

(b) prescribe forms for applications for compensation;

(c) determine all matters relating to claims for compensation; and

(d) require any person contracting directly or indirectly with an individual formally charged with or convicted of a qualifying crime for any rendition, interview, statement, book, photograph, movie, television production, play, or article relating to such crime to deposit any proceeds paid or owed to the individual under the terms of the contract into an escrow fund for the benefit of any victims of the qualifying crime and any dependents of a deceased victim, if the individual is convicted of the crime, to be held for such period of time as the division may determine is reasonably necessary to perfect the claims of the victims or dependents. Deposited proceeds may also be used to pay the costs and attorney fees of court-appointed counsel for the charged person. Each victim and dependent of a deceased victim is entitled to his actual and unreimbursed damages of all kinds or $5,000, whichever is greater. Proceeds remaining after payments to victims, dependents of deceased victims, and the county as reimbursement for any public defender or any attorney appointed for the charged person must be deposited in the account established in 53-9-109.

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's juvenile court records does not apply to proceedings under this part.

(b) request and obtain from a health care provider medical reports that are relevant to the physical condition of a claimant or from an insurance carrier, agent, or claims adjuster insurance payment information that is relevant to expenses claimed by a claimant, provided that the division has made reasonable efforts to obtain from the claimant a release of the records or information. No civil or criminal liability arises from the release of information requested under this subsection (b).

(c) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence;

(d) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge;

(e) require that law enforcement agencies and officials take reasonable care that victims be informed about the existence of this part and the procedure for applying for compensation under this part; and

(f) establish a victims' assistance coordinating and planning program.

History: En. 71-2605 by Sec. 5, Ch. 527, L. 1977; R.C.M. 1947, 71-2605; amd. Sec. 2, Ch. 367, L. 1979; amd. Sec. 1, Ch. 533, L. 1987; amd. Sec. 3, Ch. 68, L. 1989; amd. Sec. 2, Ch. 354, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2)(f) concerning establishing victims' assistance coordinating and planning program; and made minor change in style.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Subpoenas and witnesses, Title 26, ch. 2.

53-9-105. Rehabilitation of victims. The division shall refer to the department of social and rehabilitation services victims who have been permanently disabled through criminally injurious conduct, who are receiving benefits under this part, and who in the opinion of the division may be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under such programs.

History: En. 71-2616 by Sec. 16, Ch. 527, L. 1977; R.C.M. 1947, 71-2616.

Cross-References
Vocational rehabilitation, Title 53, ch. 7.

53-9-106. Attorneys' fees. (1) The division may grant attorneys' fees to attorneys for representing claimants before the division. Any attorney's fee granted by the division shall be in addition to compensation awarded the claimant under this part.

(2) The division may regulate the amount of the attorney's fee in any claim under this part when an attorney is representing a claimant.

(3) In cases under this part that go before a district court, the judge may grant, in addition to compensation benefits granted, attorneys' fees to attorneys for representing claimants before the court.

(4) In no claim or case may attorney fees in excess of 5% of the amount paid to a claimant or on his behalf be paid directly or indirectly to a claimant's attorney.

History: En. 71-2618 by Sec. 18, Ch. 527, L. 1977; R.C.M. 1947, 71-2618; amd. Sec. 2, Ch. 496, L. 1987.

Cross-References
Attorney fees, Title 25, ch. 10, part 3.

53-9-107. Public inspection and disclosure of division's records. (1) Except as provided in subsections (2) and (3), the records the division maintains in its possession in the administration of this part are open to public inspection and disclosure.

(2) Confidential criminal justice information obtained by the division is subject to the confidentiality provisions of the Montana Criminal Justice Information Act of 1979, Title 44, chapter 5. Information regarding youth court proceedings obtained by the division is subject to the confidentiality provisions of Title 41, chapter 5, part 6.

(3) In assuring that the right of individual privacy so essential to the well-being of a free society may not be infringed without the showing of a compelling state interest, the following public records of the division are exempt from disclosure:

(a) information of a personal nature, such as personal, medical, or similar information, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy.

(b) any public records or information, the disclosure of which is prohibited by federal law or regulations.

(4) If any public record of the division contains material which is not exempt under subsection (3), as well as material which is exempt from disclosure, the division shall separate the exempt and nonexempt and make the nonexempt material available for examination.

History: En. 71-2619 by Sec. 19, Ch. 527, L. 1977; R.C.M. 1947, 71-2619; amd. Sec. 3, Ch. 496, L. 1987.

Cross-References
Right to know, Art. II, sec. 9, Mont. Const.
Public records, Title 2, ch. 6.

53-9-108. Limitation of benefit entitlements to proportionate share of available funds. Claimants receiving benefits under this part are not granted an absolute entitlement to benefits. Benefits must be paid in accordance with the amount of the legislative appropriation. If the division determines at any time that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. Such reductions do not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes appropriations for such retroactive benefits.

History: En. 71-2620 by Sec. 20, Ch. 527, L. 1977; R.C.M. 1947, 71-2620.

53-9-109. Crime victims compensation account. There is a crime victims compensation and assistance account in the state special revenue fund. There shall be paid into this account 18% of the fines assessed and bails forfeited, except those paid to a justice's court, on all offenses involving a violation of chapter 3, part 1 of chapter 4, or chapters 5 through 10 of Title 61 that are a result of citations or tickets issued by the highway patrol. The money in the account is to be used solely for the purposes of this part and for victims' assistance program coordination and planning provided by the division. No fund balance in the account at the end of a fiscal year may be deposited in the general fund.

History: En. 71-2624 by Sec. 25, Ch. 527, L. 1977; R.C.M. 1947, 71-2624; amd. Sec. 3, Ch. 367, L. 1979; amd. Sec. 97, Ch. 421, L. 1979; amd. Sec. 1, Ch. 567, L. 1981; amd. Sec. 27, Ch. 281, L. 1983; amd. Sec. 37, Ch. 557, L. 1987; amd. Sec. 4, Ch. 68, L. 1989; amd. Sec. 3, Ch. 354, L. 1991.

Compiler's Comments

1991 Amendment: Near middle of first sentence, after "compensation", inserted "and assistance", at end of third sentence inserted "for victims' assistance program coordination and planning provided by the division", and in fourth sentence substituted "fund" for "cash" and "year" for "biennium"; and made minor changes in style.

Cross-References

Collection and disposition of fines, penalties, forfeitures, and fees, 3-10-601.

Traffic regulations — penalties, 61-8-711 through 61-8-720.

53-9-110. Receipt of federal funds. The division may adopt appropriate rules in order to receive federal funds under federal criminal reparation and compensation acts.

History: En. 71-2622 by Sec. 22, Ch. 527, L. 1977; R.C.M. 1947, 71-2622.

53-9-111. Penalty for fraudulently obtaining benefits. Any person who knowingly makes a false claim or a false statement or uses any other fraudulent device in connection with any claim is guilty of theft as provided in 45-6-301 and upon conviction shall, in addition to being punished as provided by that section, forfeit and repay any compensation paid under this part.

History: En. 71-2623 by Sec. 23, Ch. 527, L. 1977; R.C.M. 1947, 71-2623.

Cross-References

False claims to public agencies, 45-7-210.

53-9-112 through 53-9-120 reserved.

53-9-121. Application for compensation. An applicant for an award of compensation may apply in writing in a form that conforms substantially to that prescribed by the division.

History: En. 71-2606 by Sec. 6, Ch. 527, L. 1977; R.C.M. 1947, 71-2606(1).

53-9-122. Informal hearings. The division may hold informal hearings in order to make determinations regarding the compensability of a claim. At such hearings, the division may subpoena witnesses and documents as set forth in 2-4-104. Hearings held under this section are not considered contested case hearings under the Montana Administrative Procedure Act. However, the division shall adopt rules regarding its informal hearing procedures.

History: En. 71-2607 by Sec. 7, Ch. 527, L. 1977; R.C.M. 1947, 71-2607.

53-9-123. Evidence of condition. (1) The division may require the claimant to supplement the application with any reasonably available medical reports relating to the injury for which compensation is claimed.

(2) If the physical condition of a victim or claimant is material to a claim, the division may order the victim or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a deceased victim. The division shall pay for such examination or autopsy. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require the person to file with the division a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the division shall furnish him a copy of the report. If the victim is deceased, the division, on request, shall furnish the claimant a copy of the report.

(3) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical condition of the claimant or victim in a proceeding under this part in which that condition is an element.

History: En. 71-2608 by Sec. 8, Ch. 527, L. 1977; R.C.M. 1947, 71-2608.

Cross-References

Attorney-client privilege, 26-1-803.

53-9-124. Enforcement of division's orders — improper assertion of privilege. If a person refuses to comply with an order of the division or asserts a privilege to withhold or suppress evidence relevant to a claim, except privileges arising from the attorney-client relationship, the division may make any just order, including denial of the claim.

History: En. 71-2609 by Sec. 9, Ch. 527, L. 1977; R.C.M. 1947, 71-2609.

Cross-References

Attorney-client privilege, 26-1-803.

53-9-125. Limitations on awards. (1) Except as otherwise provided in this section, compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. Compensation in cases involving sexual offenses against minors may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct was reported to a law enforcement agency or an agency of the state responsible for provision of child welfare services, or within 1 year after the day the victim reaches 18 years of age, whichever occurs last. The time for filing a claim may be extended by the division for good cause shown.

(2) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice.

(3) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer. The report must be made within 72 hours after its occurrence, except in a case involving a sexual offense against a minor or when the division finds there was good cause for the failure to report within that time.

(4) In order to be entitled to benefits under this part, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

(5) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(6) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this part.

(7) Compensation may be denied or reduced if the victim contributed to the infliction of death or injury with respect to which the claim is made. Any reduction in benefits under this subsection shall be in proportion to what the division finds to be the victim's contribution to the infliction of death or injury.

History: En. 71-2606 by Sec. 6, Ch. 527, L. 1977; R.C.M. 1947, 71-2606(2) thru (7); amd. Sec. 4, Ch. 367, L. 1979; amd. Sec. 1, Ch. 235, L. 1991; amd. Sec. 3, Ch. 397, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 235 in (1), at beginning, inserted exception clause and inserted second sentence regarding time of filing for compensation in cases involving sexual offenses against minors; in (3), near middle of second sentence, inserted exception clause; and made minor change in style.

Chapter 397 in (2) deleted former second sentence restricting compensation awards for family members living in the same household with the offender or his accomplice. Amendment effective July 1, 1991.

53-9-126. Tentative award of compensation. If the division determines that the claimant will suffer financial hardship unless a tentative award is made and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

History: En. 71-2614 by Sec. 14, Ch. 527, L. 1977; R.C.M. 1947, 71-2614.

53-9-127. Award of compensation. (1) The division shall award compensation benefits under this part if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

(2) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed unless an application for rehearing, an appeal of the conviction, or certiorari is pending or a rehearing or new trial has been ordered.

(3) The division may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under 53-9-126.

History: (1)En. 71-2604 by Sec. 4, Ch. 527, L. 1977; Sec. 71-2604, R.C.M. 1947; (2), (3)En. 71-2610 by Sec. 10, Ch. 527, L. 1977; Sec. 71-2610, R.C.M. 1947; R.C.M. 1947, 71-2604, 71-2610.

53-9-128. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 ⅔% of the wages received at the time of the criminally injurious conduct, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments shall be made at the end of each 2-week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and such other treatment as may be approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 ⅔% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of one-half the state's average weekly wage as determined in 39-51-2201. Weekly compensation payments shall be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding $2,000, shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) Compensation payable to a victim and all of the victim's dependents in cases of the victim's death because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed $100 per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (2) of this section.

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(8) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(9) (a) Subject to the limitations in subsection (9)(c), the spouse, parent, child, brother, or sister of a victim who is killed as a result of criminally injurious conduct is entitled to reimbursement for mental health treatment received as a result of the victim's death.

(b) Subject to the limitations in subsection (9)(c), the parent, brother, or sister of a minor who is a victim of a sexual crime for which a person has been charged and who is not entitled to receive services under Title 41, chapter 3, is entitled to reimbursement for mental health treatment received as a result of the crime.

(c) Total payments made under subsections (9)(a) and (9)(b) may not exceed $500 for each person or $1,500 for a family.

History: (1) thru (7)En. 71-2612 by Sec. 12, Ch. 527, L. 1977; Sec. 71-2612, R.C.M. 1947; (8)En. 71-2613 by Sec. 13, Ch. 527, L. 1977; Sec. 71-2613, R.C.M. 1947; R.C.M. 1947, 71-2612, 71-2613(1); amd. Sec. 1, Ch. 203, L. 1987; amd. Sec. 4, Ch. 496, L. 1987; amd. Sec. 5, Ch. 68, L. 1989.

53-9-129. Award not subject to execution, attachment, garnishment, or assignment — exception. (1) An award is not subject to execution, attachment, garnishment, or other process.

(2) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) an assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) an assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

History: En. 71-2613 by Sec. 13, Ch. 527, L. 1977; R.C.M. 1947, 71-2613(2), (3).

Cross-References

Child support — income withholding, 40-5-411.

53-9-130. Reconsideration and review of division's decisions. (1) The division on its own motion or on request of the claimant may reconsider a decision making or denying an award or determining its amount. The division shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

(2) The right of reconsideration does not affect the finality of a division decision for the purpose of appeal.

History: En. 71-2615 by Sec. 15, Ch. 527, L. 1977; R.C.M. 1947, 71-2615.

53-9-131. Appeals. After the division has made final determination concerning any matter relating to a claim, if the claimant disputes the division's determination, he may appeal to the district court for the county in which he resides or Lewis and Clark County for review. Review on appeal must be in conformity with 2-4-701 through 2-4-704 of the Montana Administrative Procedure Act. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming, reversing, or modifying the division's determination.

History: En. 71-2617 by Sec. 17, Ch. 527, L. 1977; R.C.M. 1947, 71-2617; amd. Sec. 5, Ch. 496, L. 1987.

53-9-132. Subrogation. (1) If a claimant seeks compensation under this part and compensation is awarded, the division is entitled to full subrogation against a judgment or recovery received by the claimant against the offender or a collateral source arising from the criminally injurious conduct committed by the offender for all compensation paid under this part. The division's right of subrogation shall be a first lien on the judgment or recovery. If the claimant does not institute the action against the offender or collateral source within 1 year from the date the criminally injurious conduct occurred, the division may institute the action in the name of the claimant or the claimant's personal representative.

(2) If the claimant institutes the action, the division shall pay a proportional share of costs and attorneys' fees if it recovers under its subrogation interest.

(3) If the division institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the division in pursuit of the action, the excess shall be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the division has paid compensation under this part and damages for which the division has not paid compensation, then the division's subrogation interest shall apply only to that proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender or collateral source in such a way as to avoid and preclude the division from receiving its proper subrogation share as provided in this section. The division shall release its lien provided for in subsection (1) above upon receipt of its subrogation share.

History: En. 71-2611 by Sec. 11, Ch. 527, L. 1977; R.C.M. 1947, 71-2611; amd. Sec. 6, Ch. 496, L. 1987.

Cross-References

Liens, Title 71, ch. 3.

53-9-133. Effect of award on probation and parole of offender. (1) When placing any convicted person on probation the court may set as a condition of probation the payment to the state of an amount equal to any benefits paid by the division to a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

History: En. 71-2621 by Sec. 21, Ch. 527, L. 1977; R.C.M. 1947, 71-2621.

Cross-References

Sentences that may be imposed, 46-18-201.

CHAPTER 10

ADMINISTRATION OF HUMAN SERVICES

Part 1 — Plan for Delivery of Human Services (Not Codified—Temporary)

Parts 2 through 4 reserved

Part 5 — Community Services Block Grant Program

53-10-501. Definitions.
53-10-502. Allocation of federal community services block grant funds.
53-10-503. Eligible human resource development councils.
53-10-504. Block grant plan — county and state approval.
53-10-505. Fiscal and program responsibility.

Part 1

Plan for Delivery of Human Services (Not Codified — Temporary)

Part Compiler's Comments

Histories of Not Codified Sections:

53-10-101. En. Sec. 1, Ch. 520, L. 1979; amd. Sec. 10, Ch. 274, L. 1981.

53-10-102. En. Sec. 2, Ch. 520, L. 1979.

53-10-103. En. Sec. 3, Ch. 520, L. 1979.

Parts 2 through 4 reserved

Part 5

Community Services Block Grant Program

53-10-501. Definitions. As used in this part, the following definitions apply:

(1) "Block grant" means the federal community services block grant established under 42 U.S.C. 9901, et seq. (95 Stat. 511, et seq.).

(2) "Department" means the department of social and rehabilitation services provided for in 2-15-2201.

(3) "Human resource development council" means a nonprofit public or private community organization serving low-income persons in a multicounty area that has the same boundaries as one or more substate planning districts established by executive order of the governor.

History: En. Sec. 1, Ch. 237, L. 1983.

Cross-References

Low-income home weatherization programs — allocation by substate planning districts, Title 90, ch. 4, part 2.

53-10-502. Allocation of federal community services block grant funds. The department shall allocate the state's share of the block grant funds as follows:

(1) The department may retain 5% for administrative costs and 5% for special projects.

(2) The balance of the block grant funds after any retention pursuant to subsection (1) must be distributed to human resource development councils that are eligible to receive such funding under 53-10-503 as follows:

(a) $500,000, or if the balance of the block grant funds is less than $500,000, then the entire balance of the block grant funds, must be equally divided among the eligible human resource development councils; and

(b) except as provided under 53-10-504(2), the balance of the block grant funds after distribution under subsections (1) and (2)(a) must be divided among eligible human resource development councils as follows:

(i) one-half based upon the population residing within the areas of human resource development councils; and

(ii) one-half based upon the low-income population, as that population may be determined under the provisions of the block grant, residing within the areas of the human resource development councils.

History: En. Sec. 2, Ch. 237, L. 1983.

53-10-503. Eligible human resource development councils. The department may not distribute block grant funds unless the human resource development council:

(1) meets the eligibility requirements set forth in 42 U.S.C. 9904, including composition of the board; and

(2) has complied with federal and state fiscal control requirements and agrees to comply with all fiscal and program requirements of federal law.

History: En. Sec. 3, Ch. 237, L. 1983.

53-10-504. Block grant plan — county and state approval. (1) A human resource development council shall prepare a plan for use of block grant funds. The planned use must be in compliance with block grant requirements, and the plan must be made to further the goals stated in the block grant.

(2) The human resource development council shall submit the plan to the county governing bodies within its multicounty area. A county governing body may approve, disapprove, or offer amendments to the plan. If the county governing body and the human resources development council cannot agree as to the plan's components, the department shall prepare and approve a plan for such county. The department shall then allocate block grant funds to the appropriate human resource development council to administer according to the plan approved for such county by the department.

(3) The plan must be submitted to the department for approval prior to distribution by the department of block grant funds allocated to the human resource development council. The department may disapprove a plan, in whole or in part, only if the plan conflicts with a federal law or regulation. A disapproved plan may be amended and resubmitted to the department.

History: En. Sec. 4, Ch. 237, L. 1983.

53-10-505. Fiscal and program responsibility. The department shall ensure state compliance in fiscal accountability and program integrity relating to block grant funds and services. The department shall audit the human resource development councils as may be required by state and federal law.

History: En. Sec. 5, Ch. 237, L. 1983.

CHAPTERS 11 THROUGH 17

RESERVED

CHAPTER 18

SELF-SUFFICIENCY TRUSTS

Part 1 — General Provisions

53-18-101. Definitions.
53-18-102. Creation of self-sufficiency trust account.
53-18-103. Administration of trust account.
53-18-104. Benefits not affected.
53-18-105. Special account.

Part 1

General Provisions

53-18-101. Definitions. As used in this part, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services provided for in Title 2, chapter 15, part 22.

(2) "Self-sufficiency trust" means a trust created by a nonprofit corporation that is a 501-C-3 organization under the United States Internal Revenue Code of 1954, as amended, and that was organized under the Montana Nonprofit Corporation Act, Title 35, chapter 2, for the purpose of providing for the care and treatment of one or more persons who are residents of this state and are developmentally disabled, mentally ill, physically handicapped, or otherwise eligible for department services, as defined by the department.

History: En. Sec. 1, Ch. 542, L. 1989.

53-18-102. Creation of self-sufficiency trust account. (1) There is created a self-sufficiency trust account in the state treasury. The state treasurer shall deposit to the credit of the trust account money received from a self-sufficiency trust for that purpose. The state auditor shall direct payments from the trust account upon claims certified by the director of the department.

(2) The assets of the trust account must be preserved, invested, and expended in the manner and for the purposes provided in 53-18-103. At the end of each fiscal year, the unexpended account balance must carry forward to the next fiscal year and may not revert to the state general fund.

History: En. Sec. 2, Ch. 542, L. 1989.

53-18-103. Administration of trust account. (1) The department may accept money from a self-sufficiency trust for deposit in the self-sufficiency trust account pursuant to an agreement with the self-sufficiency trust naming one or more beneficiaries who are residents of this state and are developmentally disabled, mentally ill, physically handicapped, or otherwise eligible for department services, as defined by the department. The agreement must specify the care or treatment to be provided for each named beneficiary. Money in the trust account must be accounted for separately for each named beneficiary. The department of corrections and human services shall contract with the department to administer the trust account for beneficiaries who are mentally ill.

(2) (a) The department shall adopt rules to administer the trust account.

(b) The money in the trust account may be spent by the department, pursuant to its rules, only to provide care or treatment for the named beneficiary in accordance with the terms of the agreement.

(c) If the director of the department determines that the money in the trust account for a named beneficiary cannot be used for the care and treatment of the beneficiary in a manner consistent with the rules of the department and the agreement or upon request of the self-sufficiency trust, the remaining money in the trust account for the named beneficiary, together with any accumulated interest, must be promptly returned to the self-sufficiency trust that provided the money for deposit in the trust account.

(3) The trust account money must be deposited in the state treasury and invested as required by law and the earnings credited to the trust account.

History: En. Sec. 3, Ch. 542, L. 1989; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-18-104. Benefits not affected. Receipt by a beneficiary of supplemental services as a result of the self-sufficiency trust account or of care and treatment provided by the trust may not in any way reduce, impair, or diminish the benefits to which the beneficiary is otherwise entitled by law.

History: En. Sec. 4, Ch. 542, L. 1989.

53-18-105. Special account. There is created within the self-sufficiency trust account a special account for the disabled. The director of the department may accept money from any source for deposit into the special account. The money in the special account must be used by the department, subject to appropriation, for the purpose of providing for the care and treatment of low-income developmentally disabled, mentally ill, and physically handicapped persons or low-income persons otherwise eligible for department services, as defined by the department.

History: En. Sec. 5, Ch. 542, L. 1989.

CHAPTER 19

PHYSICALLY DISABLED

Part 1 — Services and Community Homes

53-19-101. Purpose.
53-19-102. Definitions.
53-19-103. Department authorized to provide services.
53-19-104. Department contracts for services — governmental units providing for community homes for persons with severe disabilities.
53-19-105. Federal and other aid.
53-19-106. Eligibility for services.
53-19-107 through 53-19-109 reserved.
53-19-110. Eligibility for residential services in a community home for persons with severe disabilities.
53-19-111. Repealed.
53-19-112. Rulemaking.
53-19-113. Repealed.

Part 2 — Community Home Licensing
(Renumbered by Code Commissioner, 1991)

Part 3 — Telecommunications Services

53-19-301. Legislative findings and declaration.
53-19-302. Definitions.
53-19-303. Term of office — vacancies.
53-19-304. Officers — meetings — quorum — compensation.
53-19-305. Power and duties.
53-19-306. Program established — purpose.
53-19-307. Provision of services.
53-19-308. Dual-party relay system — requirements.
53-19-309. Gifts and grants.
53-19-310. Fund for telecommunications services for the handicapped.
53-19-311. Special assessment.
53-19-312. Records — audit.

Part 1

Services and Community Homes

Part Cross-References

Accessibility of polling places, Title 13, ch. 3, part 2.

53-19-101. Purpose. The legislature, in recognition of needs of persons with severe disabilities and of the desirability of meeting those needs on a community level to the extent of available funding and in order to reduce the need for institutional care settings, establishes by this part a community program to assist persons with severe disabilities in living and functioning independently. This program implements Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended, for persons with severe disabilities in Montana.

History: En. Sec. 1, Ch. 713, L. 1985; amd. Sec. 3, Ch. 514, L. 1987; amd. Sec. 1, Ch. 330, L. 1989.

53-19-102. Definitions. As used in this part, the following definitions apply:

(1) "Community home for persons with severe disabilities" means a facility licensed by the department of family services, as provided for in 52-4-201 through 52-4-205.

(2) "Department" means the department of social and rehabilitation services established in 2-15-2201.

(3) "Disability" means a permanent physical or mental condition recognized as a disability by Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(4) "Person with severe disabilities" means the same as "individual with severe handicaps" as defined in the federal Rehabilitation Act of 1973 (29 U.S.C. 706(15)(B)), as may be amended. The term includes an individual whose ability to function independently in family or community or whose ability to engage or continue in employment is so limited by the severity of his physical or mental disability that the services provided under this part are required in order for the individual to achieve a greater level of independence in functioning in family or community or in engaging in or continuing in employment.

History: En. Sec. 2, Ch. 713, L. 1985; amd. Sec. 4, Ch. 514, L. 1987; amd. Sec. 2, Ch. 330, L. 1989.

53-19-103. Department authorized to provide services. (1) Subject to available appropriated funds, services provided under this part include:

(a) vocational and other rehabilitation services that enhance the ability of a person with severe disabilities to live and function independently and to engage in or continue in appropriate employment; and

(b) any services specified in Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended.

(2) To the extent that funds are appropriated and allocated for the purpose of providing services to persons with severe disabilities, the department may establish the facilities and services it determines are in the best interest of persons with severe disabilities.

(3) The scope, amount, and duration of services made available to persons with severe disabilities under this part are within the discretion of the department to determine.

History: En. Sec. 3, Ch. 713, L. 1985; amd. Sec. 5, Ch. 514, L. 1987; amd. Sec. 3, Ch. 330, L. 1989.

53-19-104. Department contracts for services — governmental units providing for community homes for persons with severe disabilities. (1) The department may expend money appropriated or available for the purposes of this part and may contract for services for eligible persons with any person or entity providing the services to persons with severe disabilities.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, may at their own expense provide services, funds, materials, and facilities for services to community homes for persons with severe disabilities.

History: En. Sec. 4, Ch. 713, L. 1985; amd. Sec. 6, Ch. 514, L. 1987; amd. Sec. 4, Ch. 330, L. 1989.

Cross-References

Public contracts generally, Title 18, ch. 1.

53-19-105. Federal and other aid. The department may apply for and receive federal-aid money or other assistance that may be available for programs in the nature of the program created by this part.

History: En. Sec. 5, Ch. 713, L. 1985.

53-19-106. Eligibility for services. (1) The department, in its discretion and in accordance with this part and Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended, may determine eligibility of persons for services under this part.

(2) To be eligible for services under this part, a person must have a disability of such severity that, to secure and maintain employment or to function independently, he requires intensive vocational or comprehensive rehabilitation services.

(3) A person with severe disabilities not receiving other vocational and rehabilitation services provided by the department has priority for services provided under this part.

History: En. Sec. 1, Ch. 514, L. 1987; amd. Sec. 5, Ch. 330, L. 1989.

53-19-107 through 53-19-109 reserved.

53-19-110. Eligibility for residential services in a community home for persons with severe disabilities. (1) The department, in its discretion and in accordance with this part, may determine eligibility for residential services in a community home for persons with severe disabilities, based on the residential needs of the person and on the availability of residential services. Any person with a severe disability, as defined in 52-4-202, may be considered for placement in a community home, regardless of the source of funding for his residential services.

(2) A person who has a primary diagnosis of mental illness or who receives mental health services under Title 53, chapter 21, is not eligible for placement in a community home for persons with severe disabilities unless he is eligible for and receiving services under this part and Title VII of the federal Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be amended, or Title XIX of the Social Security Act (42 U.S.C. 1396, et seq.), as may be amended.

History: En. Sec. 2, Ch. 514, L. 1987; amd. Sec. 6, Ch. 330, L. 1989.

53-19-111. Repealed. Sec. 16, Ch. 330, L. 1989.

History: En. Sec. 6, Ch. 713, L. 1985; amd. Sec. 7, Ch. 514, L. 1987.

53-19-112. Rulemaking. (1) For the purposes of providing services to persons with severe disabilities, the department may adopt rules necessary for the administration of services provided under this part. Rules adopted may include but are not limited to eligibility for services, facility design and acquisition, program staffing, staff training, service goals and design, quality of services, client placement procedures, client rights and privileges, client grievance procedures, fair hearings, provider grievance procedures, and accounting procedures which include accounting of client financial resources.

(2) The department shall, in cooperation with the board of nursing, adopt rules under which a properly trained staff member of a facility providing services to persons with severe disabilities under this part may supervise and assist a client of a facility in taking a medication if the medication is usually self-administered and if a physician has prescribed the assistance.

History: En. Sec. 7, Ch. 713, L. 1985; amd. Sec. 8, Ch. 514, L. 1987; amd. Sec. 7, Ch. 330, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-19-113. Repealed. Sec. 16, Ch. 330, L. 1989.

History: En. Sec. 8, Ch. 713, L. 1985.

Part 2

Community Home Licensing (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered:

53-19-201. Renumbered 52-4-201.
53-19-202. Renumbered 52-4-202.
53-19-203. Renumbered 52-4-203.
53-19-204. Renumbered 52-4-204.
53-19-205. Renumbered 52-4-205.

Part 3

Telecommunications Services

53-19-301. Legislative findings and declaration. (1) The legislature finds and declares that many Montana citizens are physically handicapped and are unable to use traditional telecommunications equipment and services without assistance. These citizens constitute a substantial and valuable resource within the United States and the state of Montana, and this segment of our population needs access to telecommunications services in order to function as contributing and productive members of our society.

(2) The legislature further finds and declares that the role of telecommunications in our world today is inestimable. Telecommunications is the primary vehicle of commerce and industry, the means to convey and receive information and knowledge, and the way we connect with others on a personal as well as business level. Telecommunications gives people independence and self-sufficiency, and it provides goods and services, human contact, and fellowship.

(3) The legislature further finds that access to telecommunications services should be provided to persons who are handicapped not only for their own sake but for the benefit of society at large. Access to telecommunications services would enhance the business and personal lives of handicapped persons, and its availability to the handicapped would be an investment of benefit to all of Montana.

(4) Consistent with the findings stated in subsections (1) through (3), the legislature finds it appropriate to provide handicapped persons access to telecommunications services by creating a program to make specialized telecommunications equipment and services available to the handicapped.

History: En. Sec. 1, Ch. 669, L. 1989.

53-19-302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Committee" means the committee on telecommunications services for the handicapped established in 2-15-2212.

(2) "Dual-party relay system" means a service that permits full and simultaneous communication between those using telecommunications devices for the deaf (TDD) and those using conventional telephone equipment.

(3) "Handicapped" means the condition of a person who is blind, deaf, hard-of-hearing, or speech-impaired.

(4) "Local exchange company" means a telecommunications company that provides telephone access lines to members of the general public who are its customers.

(5) "Program" means the program established in 53-19-306.

(6) "Specialized telecommunications equipment" means any telecommunications device that enables or assists a person who is handicapped to communicate with others by means of the conventional telephone network. The term includes but is not limited to telecommunications devices for the deaf (TDD), amplifiers, signaling devices, puff-blow devices, electronic artificial larynx devices, and telebraille.

(7) "Telephone access line" means the telephone exchange access line or channel that provides access from the premises of a customer of a local exchange company to the telecommunications network to effect the transfer of information.

History: En. Sec. 2, Ch. 669, L. 1989.

53-19-303. Term of office — vacancies. (1) Each member of the committee shall serve for a term of 3 years, except that the governor shall appoint four of the initial members to serve terms of 1 year and four of the initial members to serve terms of 2 years.

(2) A vacancy on the committee must be filled in the same manner as the original appointment.

History: En. Sec. 4, Ch. 669, L. 1989.

53-19-304. Officers — meetings — quorum — compensation. (1) The committee shall choose a chairman from its members.

(2) The committee shall meet at least once every 3 months and at such other times as determined by the chairman or by a majority of the committee.

(3) Six members of the committee constitute a quorum for the transaction of business.

(4) All members of the committee are entitled to reimbursement of expenses as provided in 2-18-501 through 2-18-503. Members of the committee who are not state employees are also entitled to receive compensation of $50 for each day they are engaged in official business of the committee.

History: En. Sec. 5, Ch. 669, L. 1989.

53-19-305. Power and duties. The committee shall oversee administration of the program provided for in 53-29-306. In fulfilling this duty, the committee shall:

(1) establish policies and procedures governing administration of the program;

(2) analyze and approve a budget for administration of services under the program;

(3) monitor the expenditure of funds for the program;

(4) provide for administration of eligibility and the delivery of services for the program as provided for in 53-19-306 through 53-19-309; and

(5) perform any other duties necessary to properly oversee administration of the program.

History: En. Sec. 6, Ch. 669, L. 1989.

53-19-306. Program established — purpose. (1) The committee shall establish and administer a program to provide specialized telecommunications equipment and services to persons who are handicapped.

(2) The purpose of the program is to:

(a) furnish specialized telecommunications equipment to meet the needs of persons who are handicapped; and

(b) provide a dual-party relay system to connect persons who are handicapped with all phases of public telecommunications service, including telecommunications service to emergency services and public safety agencies as defined in 10-4-101.

History: En. Sec. 7, Ch. 669, L. 1989.

53-19-307. Provision of services. In administering the program established in 53-19-306, the committee shall:

(1) develop an appropriate means test to determine eligibility for participation in the program;

(2) require that participants in the program be residents of Montana and that residency be maintained as a condition of eligibility for continued participation in the program;

(3) require that participants provide satisfactory evidence that they are handicapped and would benefit from the use of specialized telecommunications equipment;

(4) provide specialized telecommunications equipment to participants on the basis of a loan or lease arrangement that may include cost-sharing between the handicapped person and his employer;

(5) determine the type of specialized telecommunications equipment it considers necessary and economically feasible for use by Montana's handicapped;

(6) purchase or lease all specialized telecommunications equipment through bid by wholesale manufacturers on a competitive basis;

(7) require, as a condition of each equipment purchase or lease, that the original manufacturer provide repair and maintenance service for new and returned equipment;

(8) maintain records of each item of equipment, including the location, serial number, and telephone number of each device;

(9) require an appropriate security deposit for equipment at the time of delivery, which deposit must be refunded without interest when the equipment is returned;

(10) make reasonable efforts to recover equipment from those who become ineligible for continued participation in the program;

(11) provide a dual-party relay system that, if feasible, would be available statewide for operation 7 days a week, 24 hours a day, including holidays;

(12) implement the service described in subsection (11) within 2 years following July 1, 1989; and

(13) adopt rules necessary to administer the program.

History: En. Sec. 8, Ch. 669, L. 1989.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-19-308. Dual-party relay system — requirements. The committee shall contract with a qualified provider to design and implement a dual-party relay system that fulfills the purpose described in 53-19-306. The committee shall require, under the terms of the contract, that:

(1) the system relay all messages promptly and accurately;

(2) the system maintain the privacy of persons using the system; and

(3) the provider preserve the confidentiality of all telephone communications, except in instances in which such confidentiality would further a violation of the law.

History: En. Sec. 9, Ch. 669, L. 1989.

53-19-309. Gifts and grants. The committee may accept contributions, gifts, and grants, in money or otherwise, to the program established in 53-19-306. Monetary contributions, gifts, and grants must be deposited in the fund provided for in 53-19-310.

History: En. Sec. 10, Ch. 669, L. 1989.

53-19-310. Fund for telecommunications services for the handicapped. (1) There is an account for telecommunications services for the handicapped in the state special revenue fund in the state treasury. The account consists of:

(a) all monetary contributions, gifts, and grants received by the committee as provided in 53-19-309; and

(b) all charges billed and collected pursuant to 53-19-311.

(2) The money in the account is allocated to the committee for purposes of implementing this part.

(3) All expenditures of the committee in administering this part must be paid from money deposited in the account.

History: En. Sec. 11, Ch. 669, L. 1989.

53-19-311. Special assessment. (1) A charge of 10 cents a month may be assessed on each telephone access line provided and billed by each local exchange company and is imposed for the purposes of this part.

(2) Each customer of a local exchange company is liable for payment to the local exchange company of any charge properly imposed pursuant to this part. The local exchange company is not liable for any uncollected charge, nor does the company have an obligation to take legal action to enforce the collection of any charge that is unpaid by its customers.

(3) Each local exchange company shall bill each customer for the charge provided for in subsection (1). Except as provided in subsection (4), all charges billed and collected by a local exchange company must be transmitted to the state treasurer no later than the last day of the month following the end of each calendar quarter in which the charge is billed. All charges received by the state treasurer must be deposited in the fund established in 53-19-310 to the credit of the committee.

(4) Each local exchange company may deduct and retain 3/4 of 1% of the total charges billed and collected each month to cover its administrative expenses in complying with the requirements of subsection (3).

History: En. Sec. 12, Ch. 669, L. 1989.

53-19-312. Records — audit. (1) Each local exchange company shall maintain a record of the charges billed and the charges collected pursuant to 53-19-311 for a period of 1 year from the date of billing or collection, respectively.

(2) The committee may require an audit of each local exchange company's records to assure proper accounting of all charges billed and collected pursuant to 53-19-311. The audit must be conducted at the expense of the committee.

History: En. Sec. 13, Ch. 669, L. 1989.

CHAPTER 20

DEVELOPMENTALLY DISABLED

Part 1 — Treatment

53-20-101. Purpose.
53-20-102. Definitions.
53-20-103. Residential institution to meet standards.
53-20-104. Powers and duties of mental disabilities board of visitors.
53-20-105. Certification of professional persons required.
53-20-106. Certification of professional persons.
53-20-107. Department to compile list of qualified visitors.
53-20-108 through 53-20-110 reserved.
53-20-111. Limitation on who compelled to undertake treatment.
53-20-112. Procedural rights.
53-20-113. Waiver of rights.
53-20-114. Appointment of responsible person.
53-20-115. Repealed.
53-20-116. Professional person to attend hearing.
53-20-117. Repealed.
53-20-118. Venue for hearing.
53-20-119. Appeal procedure.
53-20-120. Repealed.
53-20-121. Petition for involuntary treatment — contents of.
53-20-122. Repealed.
53-20-123. Repealed.
53-20-124. Repealed.
53-20-125. Outcome of screening — recommendation for treatment at residential facility — hearing.
53-20-126. Maximum period of admission to residential facility.
53-20-127. Transfer to another residential facility — release to community-based alternative — hearing.
53-20-128. Extension of admission period — hearing.
53-20-129. Emergency admission.
53-20-130. Patient transfers from mental health facilities.
53-20-131. Placement in nonstate facility.
53-20-132. Court-ordered placement in community-based services prohibited.
53-20-133. Residential facility screening team — referral by court — membership — rules.
53-20-134 through 53-20-140 reserved.
53-20-141. Denial of legal rights.
53-20-142. Rights while in a residential facility.
53-20-143. Right not to be fingerprinted.
53-20-144. Rights concerning photographs.
53-20-145. Right to be free from unnecessary or excessive medication.
53-20-146. Right not to be subjected to certain treatment procedures.
53-20-147. Right not to be subjected to experimental research.
53-20-148. Right to habilitation.
53-20-149 through 53-20-160 reserved.
53-20-161. Maintenance of records.
53-20-162. Training for resident care workers.
53-20-163. Abuse of residents prohibited.
53-20-164. Resident labor.
53-20-165. Clothing for residents discharged or conditionally released.

Part 2 — Community-Based Services

53-20-201. Short title.
53-20-202. Definitions.

53-20-203. Responsibilities of department.
53-20-204. Rules.
53-20-205. Community services.
53-20-206. Planning and advisory council.
53-20-207. Regional councils.
53-20-208. Contributions of counties and municipalities.
53-20-209. Eligibility for services.
53-20-210. Application to reservation Indians.
53-20-211. No effect on existing facilities.
53-20-212. Discrimination forbidden.
53-20-213. Departments to cooperate.
53-20-214. Certain transfers of funds authorized.

Part 3 — Community Homes

53-20-301. Purpose.
53-20-302. Definition of community home — limitation on number of residents.
53-20-303. Parties authorized to establish and operate community homes.
53-20-304. Department contracts with nonprofit corporations — governmental units providing for community homes.
53-20-305. Local control of community homes — departmental licensing, administration, operation, health and safety standards.
53-20-306. Federal aid.
53-20-307. Health and safety standards for licensing.

Part 4 — Protective Services
(Renumbered by Code Commissioner, 1991)

Part 5 — State-Owned Facilities

53-20-501. Primary function of Montana developmental center and Eastmont human services center.
53-20-502. Location of and services provided by Eastmont human services center.
53-20-503. Repealed.
53-20-504. Powers and duties of department of corrections and human services and department of social and rehabilitation services.
53-20-505. Disposition of facility.

Chapter Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

Fishing permits, 87-2-803, 87-2-804.

Part 1

Treatment

53-20-101. Purpose. The purpose of this part is to:

(1) secure for each person who may be developmentally disabled such treatment and habilitation as will be suited to the needs of the person and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so severely disabled as to require institutionalized care; and

(4) assure that due process of law is accorded any person coming under the provisions of this part.

History: En. 38-1201 by Sec. 1, Ch. 468, L. 1975; R.C.M. 1947, 38-1201.

53-20-102. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such individual.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.

(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of corrections and human services.

(9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:

(a) a licensed physician or osteopath;

(b) a registered nurse; or

(c) a professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.

(12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.

(14) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.

(15) "Seriously developmentally disabled" means a person who:

(a) is developmentally disabled;

(b) is impaired in cognitive functioning; and

(c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits so severe as to require total care or near total care and because of those behaviors or deficits, cannot be safely and effectively habilitated in community-based services. *(Terminates September 30, 1995—sec. 27, Ch. 381. L. 1991.)*

53-20-102. *(Effective October 1, 1995)* **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means a district court of the state of Montana.

(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the individual attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of such individual.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a person committed to a residential facility. The committed person is a member of the team.

(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services and the department of corrections and human services.

(9) "Qualified mental retardation professional" means a person who has at least 1 year of experience working directly with persons with mental retardation or other developmental disabilities and who is:

(a) a licensed physician or osteopath;

(b) a registered nurse; or

(c) a professional program staff person for the residential facility who the department of corrections and human services determines meets the professional requirements necessary for federal certification of the facility.

(10) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont human services center.

(12) "Residential facility screening team" means a team of persons appointed as provided in 53-20-133.

(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be developmentally disabled and in need of developmental disability services.

(14) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled.

(15) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health.

History: En. 38-1202 by Sec. 2, Ch. 468, L. 1975; amd. Sec. 4, Ch. 37, L. 1977; amd. Sec. 1, Ch. 568, L. 1977; R.C.M. 1947, 38-1202(part); amd. Sec. 3, Ch. 132, L. 1983; amd. Sec. 1, Ch. 137, L. 1983; amd. Sec. 1, Ch. 569, L. 1983; amd. Sec. 5, Ch. 151, L. 1985; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 2, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 381 inserted definition of individual treatment planning team; in definition of professional person, after "licensed", substituted "psychologist, licensed psychiatrist, or a person with a master's degree in psychology" for "medical doctor", inserted (a) concerning psychometric testing and evaluation, and inserted (b) concerning developmental disabilities; inserted definition of qualified mental retardation professional; in definition of residential facility, after "means", deleted reference to any residential hospital or hospital and school dealing with the developmentally disabled on an inpatient basis and deleted second and third sentences excluding group home, foster home, halfway house, correctional facility, or facility treating the mentally ill from residential facility definition; inserted definition of residential facility screening team; and substituted present definition of seriously developmentally disabled for former definition that read: ""Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both, rendering a person unable to function in a community-based setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health".

Cross-References

"Mental impairment" defined similarly to "developmentally disabled", 39-30-103.

"Developmental disabilities" defined for purposes of community-based services, 53-20-202.

53-20-103. Residential institution to meet standards. No person shall be admitted to any publicly supported residential institution caring for developmentally disabled persons unless such institution meets the standards prescribed by this part.

History: En. 38-1231 by Sec. 31, Ch. 468, L. 1975; R.C.M. 1947, 38-1231.

53-20-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review to ensure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to a residential facility to ensure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health and human services. An experimental research project involving persons admitted to a residential facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility that is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the facility.

(5) The board shall inspect the file of each person admitted to a residential facility pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist a resident at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(7) If the board believes that a facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the superintendent of the facility and the director of the department of corrections and human services. If appropriate, after waiting a reasonable time for a response from the superintendent or the director, the board may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible person appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

(8) The board shall report annually to the governor and shall, as provided in 5-11-210, report to the legislature concerning the status of the residential facilities and habilitation programs that it has inspected.

History: En. 38-1232 by Sec. 32, Ch. 468, L. 1975; amd. Sec. 18, Ch. 546, L. 1977; R.C.M. 1947, 38-1232(2) thru (7); amd. Sec. 1, Ch. 485, L. 1979; amd. Sec. 40, Ch. 112, L. 1991; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 112 in (8) inserted reference to 5-11-210 and after "report to" deleted "each session of". Amendment effective March 20, 1991.

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 381 in (2), at end of first sentence after "health", changed "education and welfare" to "and human services"; at end of (4) substituted "facility" for "institution"; in (7), near middle of first sentence after "to the", substituted "superintendent" for "professional person in charge" and in second sentence, after "from", substituted "the superintendent or the director" for "such professional person"; and made minor changes in style.

53-20-105. Certification of professional persons required. No person may act in a professional capacity as provided for in this part unless he is a professional person as defined in 53-20-102.

History: En. Sec. 2, Ch. 569, L. 1983.

53-20-106. Certification of professional persons. (1) The department of social and rehabilitation services and the department of corrections and human services shall certify professional persons for purposes of this part.

(2) The department of social and rehabilitation services and the department of corrections and human services shall adopt rules governing the certification of professional persons. The rules must establish the appropriate combination of education, skills, and experience necessary for certification and set forth qualifications developed by reference to recognized national standards in the field of developmental disabilities.

History: En. Sec. 3, Ch. 569, L. 1983; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 4, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 381 at end of (2), after "disabilities", deleted references to standards published by the accreditation council and standards published in Title XIX of the Social Security Act and other similar standards.

53-20-107. Department to compile list of qualified visitors. The department shall compile and provide to each district court within the state a list of professional persons within the region where the district court is located who possess competencies in the evaluation and habilitation of persons with developmental disabilities and who may be available to the court to act as visitors or to otherwise provide evaluation services in guardianship proceedings involving developmentally disabled persons, together with an indication of the particular competencies the professional person possesses.

History: En. Sec. 6, Ch. 343, L. 1981; Sec. 53-20-414, MCA 1985; redes. 53-20-107 by Sec. 114, Ch. 609, L. 1987.

Cross-References

"Professional person" defined, 53-20-102.

Certification of professional persons, 53-21-106.

53-20-108 through 53-20-110 reserved.

53-20-111. Limitation on who compelled to undertake treatment. A person who has reached the age of majority may be compelled against his will to undertake a course of treatment and habilitation in a residential facility only if the person is seriously developmentally disabled.

History: En. 38-1215 by Sec. 15, Ch. 468, L. 1975; amd. Sec. 4, Ch. 568, L. 1977; R.C.M. 1947, 38-1215; amd. Sec. 5, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: After "habilitation" deleted "solely because he" and inserted "in a residential facility only if the person", before "developmentally disabled" inserted "seriously", and after "disabled" deleted "but only if such disability causes him to be unable to protect his life and health or to protect the life or safety of others"; and made minor changes in style.

53-20-112. Procedural rights. (1) A person subject to emergency admittance to a residential facility or to any hearing held pursuant to this part has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill, as provided in 53-21-115 through 53-21-118.

(2) In addition, the parents or guardian of a person alleged to be seriously developmentally disabled and in need of developmental disabilities services have the right to:

(a) be present at any hearing held pursuant to this part;

(b) be represented by counsel in any hearing;

(c) offer evidence and cross-examine witnesses in any hearing; and

(d) have the respondent examined by a professional person of their choice when such professional person is reasonably available, unless the person so chosen is objected to by the respondent or by a responsible person appointed by the court.

History: En. 38-1203 by Sec. 3, Ch. 468, L. 1975; R.C.M. 1947, 38-1203(1), (2); amd. Sec. 12, Ch. 38, L. 1979; amd. Sec. 6, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In (1), after "facility", deleted "to examination or evaluation by a professional person" and at end inserted "as provided in 53-21-115 through 53-21-118"; in (2), before "developmentally", inserted "seriously"; and made minor changes in style.

Cross-References

Involuntary commitment of mentally ill, 53-21-113 through 53-21-134.

53-20-113. Waiver of rights. (1) A person may waive his procedural rights provided that the waiver is knowingly and intentionally made. The right to counsel in a hearing held pursuant to 53-20-125 may not be waived. The right to habilitation provided for in this part may not be waived.

(2) A person admitted to a residential facility for evaluation and treatment or for an extended course of habilitation may knowingly and intentionally waive his rights only with the concurrence of the person's counsel, if any, or, if he has no counsel, his parents, guardian, or other responsible person appointed by the court.

(3) (a) In the case of a minor, the waiver of rights may be knowingly and intentionally made:

(i) when the minor is under the age of 12, by the parents of the minor with the concurrence of the responsible person, if any;

(ii) when the minor is over the age of 12, by the minor and his parents;

(iii) when the minor is over the age of 12 and the minor and his parents do not agree, the minor may make an effective waiver of his rights only with the advice of counsel.

(b) If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor.

History: En. 38-1203 by Sec. 3, Ch. 468, L. 1975; R.C.M. 1947, 38-1203(3) thru (5); amd. Sec. 7, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in second sentence, substituted "53-20-125" for "53-20-123"; substituted present (2) relating to waiver of rights of person admitted for evaluation and treatment for former (2) that read: "(2) In the case of a person who has been admitted to a residential facility for up to 30 days of evaluation and treatment or who, pursuant to the recommendation of a professional person, may be admitted to a residential facility for an extended course of habilitation, a waiver of rights can be knowingly and intentionally made only with the concurrence of the person's counsel, if any, his parents or guardian, and the responsible person appointed by the court, if any"; and made minor changes in style.

Cross-References

Due process of law, Art. II. sec. 17, Mont. Const.

Guardianship and conservatorship, Title 72, ch. 5.

53-20-114. Appointment of responsible person. Whenever, in any proceeding under this part, the court believes that a conflict of interest may exist between a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian or that the parents or guardian are unable to protect the interests of such person or whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled. The responsible person may not be an employee of a residential facility. Only one person shall at any one time be the responsible person within the meaning of this part. In appointing a responsible person, the court shall consider the preference of the respondent or patient. The court may at any time, for good cause shown, change its designation of who is the responsible person. The appointment of the responsible person must terminate at the time of the resident's discharge from the residential facility. However, the appointment of the responsible person shall not terminate during any period of conditional release from the facility.

History: **En. 38-1202 by Sec. 2, Ch. 468, L. 1975; amd. Sec. 4, Ch. 37, L. 1977; amd. Sec. 1, Ch. 568, L. 1977; R.C.M. 1947, 38-1202(part); amd. Sec. 2, Ch. 485, L. 1979.**

53-20-115. Repealed. Sec. 25, Ch. 381, L. 1991.
History: **En. 38-1212 by Sec. 12, Ch. 468, L. 1975; R.C.M. 1947, 38-1212.**

53-20-116. Professional person to attend hearing. In any hearing held pursuant to this part, a member of the residential facility screening team or the professional person who evaluated the person must be present at the hearing and subject to cross-examination.
History: **En. 38-1213 by Sec. 13, Ch. 468, L. 1975; R.C.M. 1947, 38-1213; amd. Sec. 8, Ch. 381, L. 1991.**

Compiler's Comments
1991 Amendment: After "part" substituted "a member of the residential facility screening team or" for "which involves consideration of the recommendation and report of a professional person" and after "who" substituted "evaluated the person must" for "made the recommendation and report shall".

53-20-117. Repealed. Sec. 25, Ch. 381, L. 1991.
History: **En. 38-1214 by Sec. 14, Ch. 468, L. 1975; R.C.M. 1947, 38-1214.**

53-20-118. Venue for hearing. Hearings held pursuant to this part shall be held in the district court for the district where the respondent resides, except that at the request of any party or the professional person, who must be present at the hearing, a hearing may be held in the district court for the district where the respondent is undergoing evaluation, treatment, or habilitation in a residential facility or is undergoing community-based evaluation, treatment, or habilitation. The cost of any hearing held pursuant to this part shall be borne by the county where the respondent resides.
History: **En. 38-1210 by Sec. 10, Ch. 468, L. 1975; R.C.M. 1947, 38-1210.**

Cross-References
Venue, Title 25, ch. 2.

53-20-119. Appeal procedure. Any order issued by a court after a hearing held pursuant to any provision of this part may be appealed to the Montana supreme court in the same manner as for civil appeals generally.
History: **En. 38-1211 by Sec. 11, Ch. 468, L. 1975; R.C.M. 1947, 38-1211.**

Cross-References
Appeals — how taken, Rule 4, M.R.App.P. (see Title 25, ch. 21).

53-20-120. Repealed. Sec. 25, Ch. 381, L. 1991.
History: **En. 38-1204 by Sec. 4, Ch. 468, L. 1975; R.C.M. 1947, 38-1204.**

53-20-121. Petition for involuntary treatment — contents of. (1) Any person who believes that there is a person who is seriously developmentally disabled and in need of placement in a residential facility may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of placement in a residential facility.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and their interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed responsible person; and

(f) a statement of the rights of the respondent and his parents or guardian that must be in conspicuous print and identified by a suitable heading.

History: En. 38-1205 by Sec. 5, Ch. 468, L. 1975; amd. Sec. 5, Ch. 37, L. 1977; R.C.M. 1947, 38-1205(1), (2); amd. Sec. 9, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In (1), before "developmentally", inserted "seriously", before "may" substituted "placement in a residential facility" for "developmental disability services", after "may" deleted former language requiring a professional person who believes another person is in need of developmental disability services to contact the parents or guardian of the person or the person himself, before "developmentally" inserted "seriously", and at end substituted "placement in a residential facility" for "developmental disability services"; in (2)(a), before "person", deleted "professional" and after "person" deleted "and any other person"; and made minor changes in style.

53-20-122. Repealed. Sec. 25, Ch. 381, L. 1991.

History: En. 38-1205 by Sec. 5, Ch. 468, L. 1975; amd. Sec. 5, Ch. 37, L. 1977; R.C.M. 1947, 38-1205(3), (4).

53-20-123. Repealed. Sec. 25, Ch. 381, L. 1991.

History: En. 38-1206 by Sec. 6, Ch. 468, L. 1975; amd. Sec. 6, Ch. 37, L. 1977; R.C.M. 1947, 38-1206; amd. Sec. 3, Ch. 485, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.

53-20-124. Repealed. Sec. 25, Ch. 381, L. 1991.

History: En. 38-1207 by Sec. 7, Ch. 468, L. 1975; R.C.M. 1947, 38-1207; amd. Sec. 2, Ch. 417, L. 1987.

53-20-125. Outcome of screening — recommendation for treatment at residential facility — hearing. (1) If as a result of the screening required by 53-20-133 the residential facility screening team concludes that the person evaluated is seriously developmentally disabled and recommends treatment and habilitation in a residential facility on an extended basis, the team shall file its written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation and shall describe any tests or evaluation devices that have been employed in evaluating the patient.

(2) If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian, the court shall appoint a responsible person.

(3) At the request of the respondent, his parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents (or guardian) are indigent and if they request it, the court shall appoint counsel for the parents or guardian.

(4) Notice of the recommendation must be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if

known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(5) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be held on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing must be held before the court without jury. The rules of civil procedure must apply.

(6) If the court finds that the respondent is seriously developmentally disabled, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled but not seriously developmentally disabled, it shall dismiss the petition and refer the respondent to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the petition.

(7) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if admission is not in the best interests of the person.

History: En. 38-1208 by Sec. 8, Ch. 468, L. 1975; amd. Sec. 7, Ch. 37, L. 1977; amd. Sec. 2, Ch. 568, L. 1977; R.C.M. 1947, 38-1208(1) thru (4); amd. Sec. 3, Ch. 417, L. 1987; amd. Sec. 10, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning of (1) substituted "screening required by 53-20-133 the residential facility screening team" for former language relating to evaluation and treatment agreed to by parent, guardian, or person pursuant to 53-20-120 or by court order and near middle, before "shall", substituted "team" for "professional person"; in (6), after "disabled", deleted "and that available community-based services are not adequate to protect the life and physical safety of the person and others or to provide appropriate treatment and habilitation" and in second sentence, after "disabled", substituted "but not seriously developmentally disabled" for "in need of developmental disability services, and eligible for placement in community-based services and that available community-based services are adequate to protect the life and physical safety of the person and others and to provide appropriate treatment and habilitation"; and made minor changes in style.

53-20-126. Maximum period of admission to residential facility. (1) No person shall be admitted to a residential facility for longer than 30 days except on approval of the court. Whenever a person is admitted to a residential facility for longer than 30 days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.

(2) The court order approving the admission shall specify the maximum period of time for which the person is admitted to the residential facility. In no case shall this maximum period exceed 1 year.

History: En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977; R.C.M. 1947, 38-1209(1), (2).

53-20-127. Transfer to another residential facility — release to community-based alternative — hearing. (1) If, at any time during the period for which a person is admitted to a residential facility for an extended period of habilitation and treatment, the qualified mental retardation professional in charge of the resident decides that the person no longer requires placement in a residential facility and that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others or that it is in the best interests of the resident that he be transferred to another residential facility, then he may release the resident to the community-based alternative or transfer the resident to the other residential facility no less than 15 days after sending notice of the proposed release or transfer to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court that ordered the admission. If the resident has been found unfit to proceed to trial, notice must be sent to the court that found the resident unfit to proceed to trial and to the county attorney and the attorney who represented the resident at the time the resident was found unfit to proceed to trial.

(a) If any of the parties so notified objects to the release or transfer, they may petition the court for a hearing to determine whether the release or transfer should be allowed. The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative inquire concerning the propriety of the release or transfer.

(b) Nothing in this subsection (1) prevents the transfer of a resident to a hospital or other medical facility for necessary medical treatment or emergency transfer of a resident to a mental health facility provided the emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice must be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(2) If a person is admitted to a residential facility for an extended course of habilitation without a hearing and if subsequent to admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available that is more suitable to the needs of the resident, the party may request the qualified mental retardation professional in charge of the resident to release the resident to the alternative if it is a community-based alternative or transfer the resident to the alternative if it is a residential alternative. Any transfer or release must comply with the requirements of subsection (1). If the qualified mental retardation professional in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing must comply with the procedures set forth in 53-20-125.

History: (1)En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977; Sec. 38-1209, R.C.M. 1947; (2)En. 38-1208 by Sec. 8, Ch. 468, L. 1975; amd. Sec. 7, Ch. 37, L. 1977; amd. Sec. 2, Ch. 568, L. 1977; Sec. 38-1208, R.C.M. 1947; R.C.M. 1947, 38-1208(5), 38-1209(3); amd. Sec. 11, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In first sentence in (1) and in two places in (2) substituted "qualified mental retardation professional" for "professional person"; in (1), after "decides that", inserted "the person no longer requires placement in a residential facility and that"; and made minor changes in style.

53-20-128. Extension of admission period — hearing. (1) If the qualified mental retardation professional in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least 15 days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court that issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request must be accompanied by a written report describing the habilitation plan that has been undertaken for the resident and the future habilitation plan that is anticipated by the qualified mental retardation professional.

(2) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing must be conducted in the manner set forth in 53-20-125. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require treatment in a residential facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the respondent to the department of social and rehabilitation services to be considered for placement in community-based services according to 53-20-209. If the person is placed in community-based services or if the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court may not order continuation of admission to a residential facility that does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility.

History: En. 38-1209 by Sec. 9, Ch. 468, L. 1975; amd. Sec. 3, Ch. 568, L. 1977; R.C.M. 1947, 38-1209(4), (5); amd. Sec. 4, Ch. 417, L. 1987; amd. Sec. 12, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In two places in (1) substituted "qualified mental retardation professional" for "professional person"; in third sentence of (2), after "require", substituted "treatment in a residential facility" for "residential treatment"; and made minor changes in style.

53-20-129. Emergency admission. A professional person may admit a person believed to be seriously developmentally disabled to a residential facility on an emergency basis when necessary to protect the person or others from death or serious bodily harm. A petition as set out in 53-20-121 and 53-20-125 must be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the residential facility screening team shall report back to the court on the fifth judicial day following the filing of the petition. Once a petition is filed, continued detention in the residential facility may be allowed only on order of the court when necessary to protect the respondent or others from death or serious bodily harm. In no case may an emergency admission to a residential facility continue for longer than 30 days without subsequent proceedings before the court.

History: **En. 38-1216 by Sec. 16, Ch. 468, L. 1975; amd. Sec. 5, Ch. 568, L. 1977; R.C.M. 1947, 38-1216; amd. Sec. 13, Ch. 381, L. 1991.**

Compiler's Comments

1991 Amendment: At beginning deleted "The parents, guardian, the person himself, or a", before "developmentally" inserted "seriously", at beginning of second sentence deleted "If requested by the parents, guardian, or the person admitted on an emergency basis", after "53-20-121 and" substituted "53-20-125" for "53-20-122", and in third sentence, after "filed, the", substituted "residential facility screening team" for "professional person assigned by the court to conduct the examination and inquiry" and before "judicial day" changed "next" to "fifth"; and made minor changes in style.

53-20-130. Patient transfers from mental health facilities. If any person is a patient in a mental health facility and the professional person in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be admitted to a residential facility or an appropriate less restrictive alternative, then the professional person shall commence proceedings to effect such admission, consistent with the procedures set forth in this part for admissions generally.

History: **En. 38-1233 by Sec. 33, Ch. 468, L. 1975; R.C.M. 1947, 38-1233; amd. Sec. 4, Ch. 485, L. 1979.**

53-20-131. Placement in nonstate facility. (1) Consistent with other provisions of this part, a person admitted to a residential facility under this part for a period of more than 30 days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to an out-of-state facility for the habilitation of persons who are developmentally disabled if the out-of-state facility agrees to receive the person. Such a commitment or transfer may not be for a longer period of time than is permitted within Montana. If the person is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation must be borne by the state of Montana.

(2) The transfer of persons admitted to a residential facility out of Montana under the provisions of this part or into Montana under the laws of another jurisdiction must be governed by the provisions of the Interstate Compact on Mental Health.

History: **En. 38-1218 by Sec. 18, Ch. 468, L. 1975; R.C.M. 1947, 38-1218; amd. Sec. 6, Ch. 151, L. 1985; amd. Sec. 14, Ch. 381, L. 1991.**

Compiler's Comments

1991 Amendment: Deleted former (1) that read: "(1) If a person is admitted to a residential facility under the provisions of this part and is eligible for hospital care, treatment, or habilitation by an agency of the United States and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or residential facility operated by the agency and in which the person is admitted shall, with respect to the person, be vested with the same powers as the superintendent of the Montana developmental center with respect to detention, custody, transfer, and release of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so admitted and to determine the necessity for continuance of their admission"; and made minor changes in style.

53-20-132. Court-ordered placement in community-based services prohibited. Nothing in this part may be construed as authorizing the placement of and delivery of services to developmentally disabled persons in community-based services by court order. Placement of persons in community-based services is governed by 53-20-209.

History: En. Sec. 1, Ch. 417, L. 1987; amd. Sec. 15, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: At end of first sentence, after "order", deleted "except as provided in 53-20-123(4)".

53-20-133. Residential facility screening team — referral by court — membership — rules. (1) When the district court considers a person for commitment to a residential facility under this part, the court shall refer the person to the residential facility screening team for screening to determine whether placement and habilitation in a residential facility are appropriate for the person.

(2) A court may not commit a person to a residential facility under 53-20-125 unless the residential facility screening team determines that placement and habilitation in a residential facility are appropriate for the person.

(3) The residential facility screening team may not determine that placement and habilitation in a residential facility are appropriate unless the residential facility screening team determines that the person is seriously developmentally disabled.

(4) The residential facility screening team shall provide the court with the social and placement information relied upon by the residential facility screening team in making its determination.

(5) For purposes of this part, the department of social and rehabilitation services and the department of corrections and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team.

History: En. Sec. 1, Ch. 381, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-20-134 through 53-20-140 reserved.

53-20-141. Denial of legal rights. (1) Unless specifically stated in an order by the court, a person admitted to a residential facility for an extended course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except insofar as it may be necessary to detain the person for habilitation, evaluation, or care.

(2) Whenever a person is admitted to a residential facility for a period of more than 30 days for an extended course of habilitation, the court ordering the admission may make an order stating specifically any legal rights that are denied the respondent and any legal disabilities that are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the admission if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of the admission may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been admitted to a residential facility pursuant to this part must, upon the termination of the admission, be automatically restored to all of his civil and legal rights that may have been lost when he was admitted. However, this subsection does not affect any guardianship or conservatorship created independently of the admission proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a residential facility following a period of evaluation and habilitation must be given a written statement setting forth the substance of this subsection.

History: En. 38-1217 by Sec. 17, Ch. 468, L. 1975; R.C.M. 1947, 38-1217; amd. Sec. 16, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: Deleted former (4) that read: "(4) Any person admitted to a residential facility prior to July 1, 1975, shall enjoy all the rights and privileges of a person admitted after July 1, 1975"; and made minor changes in style.

Cross-References

When person entitled to bring action is under a disability, 27-2-401.

Protective services, Title 52, ch. 4, part 1.

Guardians of incapacitated persons, Title 72, ch. 5, part 3.

53-20-142. Rights while in a residential facility. Persons admitted to a residential facility for a period of habilitation shall enjoy the following rights:

(1) Residents have a right to dignity, privacy, and humane care.

(2) Residents are entitled to send and receive sealed mail. Moreover, it is the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents must have the same rights and access to private telephone communication as patients at any public hospital except to the extent that the individual treatment planning team or the qualified mental retardation professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if any restrictions are to be continued.

(4) Residents have an unrestricted right to visitation except to the extent that the individual treatment planning team or the qualified mental retardation professional responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for the restrictions. The written order must be renewed monthly if restrictions are to be continued.

(5) Residents have a right to receive suitable educational and habilitation services regardless of chronological age, degree of retardation, or accompanying disabilities or handicaps.

(6) Each resident must have an adequate allowance of neat, clean, suitably fitting, and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents must have the opportunity to select from various types of neat, clean, and seasonable clothing. The clothing must be considered the resident's throughout his stay in the facility. Clothing, both in amount and type, must make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(7) Each resident has the right to keep and use his own personal possessions except insofar as such clothes or personal possessions may be determined by the individual treatment planning team or the qualified mental retardation professional to be dangerous either to himself or to others.

(8) Each resident has a right to a humane physical environment within the residential facility. The facility must be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) regular housekeeping and maintenance procedures that will ensure that the facility is maintained in a safe, clean, and attractive condition must be developed and implemented;

(b) pursuant to an established routine maintenance and repair program, the physical plant must be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety, and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents;

(c) the physical facilities must meet all fire and safety standards established by the state and locality. In addition, the facility must meet the provisions of the life safety code of the national fire protection association that are applicable to it.

(d) there must be special facilities for nonambulatory residents to ensure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision must be made to permit nonambulatory residents to communicate their needs to staff.

(9) Residents have a right to receive prompt and adequate medical treatment for any physical or mental ailments or injuries or physical disabilities and for the prevention of any illness or disability. Such medical treatment must meet standards of medical practice in the community. However, nothing in this subsection may be interpreted to impair other rights of a resident in regard to involuntary commitment for mental illness, use of psychotropic medication, use of hazardous, aversive, or experimental procedures, or the refusal of such treatment.

(10) Corporal punishment is not permitted.

(11) The opportunity for religious worship must be accorded to each resident who desires such worship. Provisions for religious worship must be

made available to all residents on a nondiscriminatory basis. An individual may not be compelled to engage in any religious activities.

(12) Residents have a right to a nourishing, well-balanced diet. The diet for residents must provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions must be made for special therapeutic diets and for substitutes at the request of the resident, his parents, guardian, or next of kin, or the responsible person appointed by the court in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet may not be used as punishment.

(13) Residents have a right to regular physical exercise several times a week. It is the duty of the facility to provide both indoor and outdoor facilities and equipment for such exercise. Residents have a right to be outdoors daily in the absence of contrary medical considerations.

(14) Residents have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex except where the individual treatment planning team or the qualified mental retardation professional responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons for the order. The order must be renewed monthly if the restriction is to be continued.

History: En. 38-1221 by Sec. 21, Ch. 468, L. 1975; R.C.M. 1947, 38-1221; amd. Sec. 5, Ch. 485, L. 1979; amd. Sec. 17, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In (3), (4), (7), and (14), substituted "the individual treatment planning team or the qualified mental retardation professional" for "a professional person"; in (6), at end of third sentence, substituted "facility" for "institution"; and made minor changes in style.

Cross-References

Institutions and assistance, Art. XII, sec. 3, Mont. Const.

53-20-143. Right not to be fingerprinted. No person admitted to or in a residential facility shall be fingerprinted unless required by other provisions of law.

History: En. 38-1219 by Sec. 19, Ch. 468, L. 1975; R.C.M. 1947, 38-1219.

53-20-144. Rights concerning photographs. (1) A person admitted to a residential facility may be photographed upon admission for identification, medical, habilitative, and administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical or nonhabilitative photographs shall be taken or used without consent of the resident's parents or guardian or the responsible person appointed by the court.

History: En. 38-1220 by Sec. 20, Ch. 468, L. 1975; R.C.M. 1947, 38-1220; amd. Sec. 6, Ch. 485, L. 1979.

53-20-145. Right to be free from unnecessary or excessive medication. Residents have a right to be free from unnecessary or excessive medication. Medication may not be administered unless at the written order of a physician. The individual treatment planning team and the attending physician are responsible for all medication given or administered to a resident. The use of medication may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication must be kept in his medical records. A pharmacist or a registered nurse shall review monthly the record of each resident on medication for potential adverse reactions, allergies, interactions, contraindications, rationality, and laboratory test modifications and shall advise the physician of any problems. Medications must be reviewed quarterly by the attending or staff physician. At least monthly, an attending physician shall review the drug regimen of each patient on psychotropic medication. All prescriptions must be written with a termination date that may not exceed 90 days. Medication for newly admitted residents must be reviewed and reordered as necessary upon admission and then every 30 days for the first 90 days. Medications may not be used as punishment, for the convenience of staff, as a substitute for a habilitation program, or in quantities that interfere with the resident's treatment program. Nothing in this section may be interpreted to relieve a physician or other professional or medical staff person from any obligation to adequately monitor the medication of a resident, with due consideration to the nature of the medication, the purpose for which it is given, and the condition of the resident.

History: En. 38-1226 by Sec. 26, Ch. 468, L. 1975; R.C.M. 1947, 38-1226; amd. Sec. 7, Ch. 485, L. 1979; amd. Sec. 18, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of third sentence substituted "individual treatment planning team" for "professional person in charge of the facility" and in next to last sentence, before "program", inserted "habilitation"; and made minor changes in style.

53-20-146. Right not to be subjected to certain treatment procedures. (1) Residents of a residential facility have a right not to be subjected to any unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. Such proposed procedures must first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

(2) Physical restraint may be employed only when absolutely necessary to protect the resident from injury to himself or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, professional person, or qualified mental retardation professional. Orders for restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the person restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, may not be employed. Legitimate "time

out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli must be reviewed and approved by the mental disabilities board of visitors and may be conducted only with the express and informed consent of the affected resident, if the resident is able to give consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. Such behavior modification programs may be conducted only under the supervision of and in the presence of a qualified mental retardation professional who has had proper training in such techniques.

(5) A resident may not be subjected to a behavior modification program that attempts to extinguish socially appropriate behavior or to develop new behavior patterns when such behavior modifications serve only institutional convenience.

(6) Electric shock devices are considered a research technique for the purpose of this part. Such devices may be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of such devices is subject to the conditions prescribed by this part for experimental research generally and may be used only under the direct and specific order of a physician and the superintendent of the residential facility.

History: En. 38-1227 by Sec. 27, Ch. 468, L. 1975; R.C.M. 1947, 38-1227; amd. Sec. 8, Ch. 485, L. 1979; amd. Sec. 19, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In (2), at beginning of fifth sentence, substituted "Use of restraints may be authorized by a physician, professional person, or a qualified mental retardation professional" for "Only a professional person may authorize the use of restraints" and in sixth sentence, after "restraints", deleted "by a professional person"; in (4), in second sentence, substituted "qualified mental retardation professional" for "professional person"; near end of (6) substituted "a physician and the superintendent" for "the professional person in charge"; and made minor changes in style.

53-20-147. Right not to be subjected to experimental research. (1) Residents of a residential facility shall have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel.

(2) Such proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval, the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare for projects supported by that agency.

History: En. 38-1228 by Sec. 28, Ch. 468, L. 1975; R.C.M. 1947, 38-1228.

53-20-148. Right to habilitation. (1) Persons admitted to residential facilities shall have a right to habilitation, including medical treatment, education, and care suited to their needs, regardless of age, degree of retardation, or handicapping condition. Each resident has a right to a habilitation program that will maximize his human abilities and enhance his ability to cope with his environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize his fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residences;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within 30 days of his admission to a residential facility, each resident must have an evaluation by appropriate specialists for programming purposes.

(4) Each resident must have an individualized habilitation plan formulated by an individual treatment planning team. This plan must be implemented as soon as possible, but no later than 30 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, must commence promptly upon the resident's admission. Each individualized habilitation plan must contain:

(a) a statement of the nature of the specific limitations and the needs of the resident;

(b) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professionals and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, based on the resident's needs, including criteria for discharge and a projected date for discharge.

(5) As part of his habilitation plan, each resident must have an individualized postinstitutionalization plan that includes an identification of services needed to make a satisfactory community placement possible. This plan must be developed by the individual treatment planning team that shall begin preparation of the plan upon the resident's admission to the facility and shall complete the plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and

the resident, if able to give informed consent, must be consulted in the development of the plan and must be informed of the content of the plan.

(6) In the interests of continuity of care, one qualified mental retardation professional shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. The qualified mental retardation professional shall also be responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan must be reviewed monthly by the qualified mental retardation professional responsible for supervising the implementation of the plan and must be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident must receive a comprehensive psychological, social, habilitative, and medical diagnosis and evaluation and his habilitation plan must be reviewed and revised accordingly by the individual treatment planning team. A habilitation plan must be reviewed monthly.

(8) Each resident placed in the community must receive transitional habilitation assistance.

(9) The superintendent of the residential facility, or his designee, shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's habilitation and medical condition. The report must also state any appropriate habilitation program that has not been afforded to the resident because of inadequate habilitation resources.

(10) Each resident, the parents or guardian of each resident, and the responsible person appointed by the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning the care and habilitation of the resident that may be available to assist them in understanding the situation of the resident and the rights of the resident in the facility.

History: En. 38-1222 by Sec. 22, Ch. 468, L. 1975; amd. Sec. 8, Ch. 37, L. 1977; R.C.M. 1947, 38-1222; amd. Sec. 9, Ch. 485, L. 1979; amd. Sec. 20, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In (4), at end of first sentence, substituted "an individual treatment planning team" for "the facility" and in second sentence, before "implemented", deleted "developed by appropriate professional persons and"; in (4)(e) substituted "professionals" for "professional persons"; in (5), in second sentence, substituted "the individual treatment planning team that" for "a professional person who"; in (5) and (10) substituted "facility" for "institution"; in two places in (6) and in (7) substituted "qualified mental retardation professional" for "professional person"; in (7), near end of second sentence after "reviewed", substituted "and revised accordingly by the individual treatment planning team" for "by an interdisciplinary team of no less than two professional persons and such resident care workers as are directly involved in his habilitation and care"; in (9), near beginning, substituted "superintendent" for "professional person in charge" and after "facility" inserted "or his designee"; at beginning of (10) inserted "Each resident", after "guardian of each resident" changed "or" to "and", in middle, before "all", inserted "and be orally informed of", after "habilitation" inserted "the rights accorded by 53-20-142, and", and deleted former second sentence requiring that resident upon admission and parent or guardian be informed of and be provided a written copy of standards; and made minor changes in style.

53-20-149 through 53-20-160 reserved.

53-20-161. Maintenance of records. (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by his parents or guardian or the responsible person must be permitted access to the resident's records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if he is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

(f) the superintendent of the residential facility or his designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

(g) the superintendent of the residential facility or his designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or

(h) the superintendent of the residential facility or his designee as custodian of a resident of that facility whenever release is required by federal or state law or department of social and rehabilitation services rules.

(2) Information may not be released by a superintendent or his designee as set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release of information to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court that ordered the admission. If any of the parties so notified objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to these subsections except in accordance with written policies consistent with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information shall also receive a copy of the written policy of the facility governing release of information.

(3) These records must include:

(a) identification data, including the resident's legal status;

(b) the resident's history, including but not limited to:

(i) family data, educational background, and employment record;

(ii) prior medical history, both physical and mental, including prior institutionalization;

(c) the resident's grievances, if any;

(d) an inventory of the resident's life skills, including mode of communication;

(e) a record of each physical examination that describes the results of the examination;

(f) a copy of the individual habilitation plan and any modifications thereto and an appropriate summary that will guide and assist the resident care workers in implementing the resident's program;

(g) the findings made in monthly reviews of the habilitation plan, which findings must include an analysis of the successes and failures of the habilitation program and direct whatever modifications are necessary;

(h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications thereto and a summary of the steps that have been taken to implement that plan;

(i) a medication history and status;

(j) a summary of each significant contact by a professional person with a resident;

(k) a summary of the resident's response to his habilitation plan, prepared by a qualified mental retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, such response must be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity upon the resident's progress in the habilitation plan;

(m) a signed order by a qualified mental retardation professional, professional person, or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures, illnesses, injuries, and treatments thereof and immunizations.

History: En. 38-1223 by Sec. 23, Ch. 468, L. 1975; R.C.M. 1947, 38-1223; amd. Sec. 10, Ch. 485, L. 1979; amd. Sec. 21, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in first sentence before "persons", deleted "professional" and after "persons" deleted "to the resident care workers"; in three places in (2) substituted "facility" for "institution"; in (3)(k) substituted "qualified mental retardation professional" for "professional person"; in (3)(m) inserted "qualified mental retardation professional" and after "person" inserted "or physician"; and made minor changes in style.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

53-20-162. Training for resident care workers. All resident care workers who have not had prior clinical experience in a residential facility for habilitation of the developmentally disabled must be given suitable orientation training. Staff members on all levels must be given suitable, regularly scheduled in-service training. Each resident care worker shall receive supervision that emphasizes the protection of residents and their rights.

History: En. 38-1224 by Sec. 24, Ch. 468, L. 1975; R.C.M. 1947, 38-1224; amd. Sec. 22, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In third sentence, after "shall", substituted "receive supervision that emphasizes the protection of residents and their rights" for "be under the direct professional supervision of a professional person"; and made minor changes in style.

53-20-163. Abuse of residents prohibited. (1) Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident. Alleged violations must be reported immediately to the superintendent of the facility, and there must be a written record that:

(a) each alleged violation has been thoroughly investigated and findings stated;

(b) the results of the preliminary investigation are reported to the superintendent of the facility within 24 hours of the report of the incident.

(2) The reports must also be made to the mental disabilities board of visitors monthly. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members.

History: En. 38-1225 by Sec. 25, Ch. 468, L. 1975; R.C.M. 1947, 38-1225; amd. Sec. 23, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In second sentence of (1) and in (1)(b) substituted "superintendent" for "professional person in charge"; in (2), after "monthly", deleted "and to the developmental disabilities advisory council at its next scheduled public meeting"; and made minor changes in style.

53-20-164. Resident labor. The following rules govern resident labor:

(1) A resident may not be required to perform labor that involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility may not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. 206, as amended.

(2) A resident may not be involved in the care (feeding, clothing, bathing), training, or supervision of other residents unless he:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for such activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. 206, as amended.

(3) Residents may be required to perform vocational training tasks that do not involve the operation and maintenance of the facility, subject to a

presumption that an assignment of longer than 3 months to any task is not a training task, provided the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified mental retardation professional and the individual treatment planning team responsible for supervising the resident's habilitation; and

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by the qualified mental retardation professional and the individual treatment planning team responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. 206, as amended.

(5) If a resident performs habilitative labor that involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the resident may be compensated at a rate that bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(7) Deductions or payments for care and other charges may not deprive a resident of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing must be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance, or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work.

History: En. 38-1229 by Sec. 29, Ch. 468, L. 1975; R.C.M. 1947, 38-1229; amd. Sec. 11, Ch. 485, L. 1979; amd. Sec. 24, Ch. 381, L. 1991.

Compiler's Comments

1991 Amendment: In (3)(a) and (4)(a) substituted "the qualified mental retardation professional and the individual treatment planning team" for "a professional person"; and made minor changes in style.

53-20-165. Clothing for residents discharged or conditionally released. A resident may not be discharged or conditionally released from a residential facility for the developmentally disabled without suitable reasonable clothing that will allow the resident to make a normal appearance in the community.

History: En. Sec. 12, Ch. 485, L. 1979.

Cross-References

Clothing purchases, 18-4-133.

Part 2

Community-Based Services

Part Cross-References

Regular classes preferred — obligation to establish special education program, 20-7-411.

53-20-201. Short title. This part shall be known and may be cited as the "Montana Developmental Disabilities Services and Facilities Act of 1974".

History: En. 80-2611 by Sec. 1, Ch. 325, L. 1974; redes. 71-2401 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2401.

53-20-202. Definitions. As used in this part, the following definitions apply:

(1) "Comprehensive developmental disability system" means a system of services, including but not limited to the following basic services, with the intention of providing alternatives to institutionalization:

(a) evaluation services;
(b) diagnostic services;
(c) treatment services;
(d) day-care services;
(e) training services;
(f) education services;
(g) employment services;
(h) recreation services;
(i) personal-care services;
(j) domiciliary-care services;
(k) special living arrangements services;
(l) counseling services;
(m) information and referral services;
(n) follow-along services;
(o) protective and other social and sociolegal services; and
(p) transportation services.

(2) "Department" means the department of social and rehabilitation services.

(3) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurological handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of the person.

(4) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(5) "Planning and advisory council" or "council" means the developmental disabilities planning and advisory council created in 2-15-2204.

History: En. 80-2612 by Sec. 2, Ch. 325, L. 1974; R.C.M. 1947, 80-2612; amd. and redes. 71-2402 by Sec. 1, Ch. 239, L. 1975; amd. Sec. 1, Ch. 559, L. 1977; R.C.M. 1947, 71-2402; amd. Sec. 113, Ch. 370, L. 1987.

53-20-203. Responsibilities of department. The department shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities program which shall include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community-centered services. Every means shall be utilized to initiate and operate the service program in cooperation with local agencies under the provisions of 53-20-205 and 53-20-207.

(3) collect and disseminate information relating to developmental disabilities;

(4) prepare, with the assistance of the planning and advisory council, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. The services shall include but not be limited to community comprehensive developmental disabilities services as referred to in 53-20-202.

(5) provide by rule for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(6) provide state personnel to assist regional councils provided for in 53-20-207;

(7) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state;

(8) require that habilitation plans be developed, implemented, and continuously maintained for all developmentally disabled persons who are served through a community-based program funded by the state; and

(9) use funds available for cases in which special medical or material assistance is necessary to rehabilitate developmentally disabled or physically handicapped children if such assistance is not otherwise provided for by law.

History: En. 80-2613 by Sec. 3, Ch. 325, L. 1974; R.C.M. 1947, 80-2613; amd. and redes. 71-2403 by Sec. 2, Ch. 239, L. 1975; amd. Sec. 2, Ch. 559, L. 1977; R.C.M. 1947, 71-2403; amd. Sec. 1, Ch. 414, L. 1979; amd. Sec. 1, Ch. 426, L. 1987; amd. Sec. 93, Ch. 609, L. 1987.

53-20-204. Rules. (1) The department may adopt rules necessary for the proper administration of this part.

(2) The department shall adopt rules in cooperation with the board of nursing under which a properly trained staff member of a facility providing services to developmentally disabled persons under this part may assist and supervise a client of the facility in taking medication if the medication is usually self-administered and if a physician has prescribed the assistance.

History: En. 80-2614 by Sec. 4, Ch. 325, L. 1974; R.C.M. 1947, 80-2614; amd. and redes. 71-2404 by Sec. 3, Ch. 239, L. 1975; amd. Sec. 41, Ch. 37, L. 1977; amd. Sec. 3, Ch. 559, L. 1977; R.C.M. 1947, 71-2404(1), (4).

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Right to be free from unnecessary or excessive medication, 53-20-145.

53-20-205. Community services. (1) The department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or accredited health or long-term care facilities.

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department shall contain specific conditions for performance by the contractor. It shall set minimum standards for programs and establish appropriate qualifications for persons employed in such programs.

(3) All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing herein requires facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

(4) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this part shall conform as nearly as possible to the plans of the advisory council created under 2-15-2204 and the regional councils provided for in 53-20-207.

(5) The department may promote scientific and medical research investigations relative to the incidence, cause, prevention, and care of persons with developmental disabilities.

History: (1), (4)En. 80-2615 by Sec. 5, Ch. 325, L. 1974; R.C.M. 1947, 80-2615; amd. and redes. 71-2405 by Sec. 4, Ch. 239, L. 1975; amd. Sec. 42, Ch. 37, L. 1977; Sec. 71-2405, R.C.M. 1947; (2), (3)En. 80-2614 by Sec. 4, Ch. 325, L. 1974; R.C.M. 1947, 80-2614; amd. and redes. 71-2404 by Sec. 3, Ch. 239, L. 1975; amd. Sec. 41, Ch. 37, L. 1977; amd. Sec. 3, Ch. 559, L. 1977; Sec. 71-2404, R.C.M. 1947; R.C.M. 1947, 71-2404(2), (3), 71-2405; amd. Sec. 13, Ch. 38, L. 1979; (5)En. Sec. 2, Ch. 414, L. 1979.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Public contracts generally, Title 18, ch. 1.

One-step licensing — inspection by other department, Title 50, ch. 8.

53-20-206. Planning and advisory council. (1) The planning and advisory council may elect from among its members the officers necessary for the proper management of the council.

(2) The council may adopt rules governing its own organization and procedures.

(3) A majority of the members of the council constitutes a quorum for the transaction of business.

(4) The council may employ and fix the compensation and duties of necessary staff.

(5) A council member, unless he is a full-time salaried officer or employee of this state or any of the political subdivisions of this state, is entitled to be paid in an amount to be determined by the council, not to exceed $25, for each day in which he is actually and necessarily engaged in the performance of council duties. A council member is also entitled to be reimbursed for travel expenses incurred while in the performance of council duties as provided for in 2-18-501 through 2-18-503. Members who are full-time salaried officers or employees of this state or any political subdivisions of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503.

(6) The council shall:

(a) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled;

(b) develop a plan for a statewide system of community-based services for the developmentally disabled; and

(c) serve in any capacity required by federal law for the administration of federal programs for services to the developmentally disabled.

History: En. 71-2406 by Sec. 5, Ch. 239, L. 1975; amd. Sec. 4, Ch. 559, L. 1977; R.C.M. 1947, 71-2406(4) thru (9).

53-20-207. Regional councils. (1) The department shall approve a citizens' organization as a regional council for each of the following five regions:

(a) region one, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Treasure, Rosebud, Custer, Fallon, Powder River, and Carter Counties;

(b) region two, consisting of Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, and Cascade Counties;

(c) region three, consisting of Judith Basin, Fergus, Petroleum, Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Big Horn, and Carbon Counties;

(d) region four, consisting of Powell, Lewis and Clark, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park Counties; and

(e) region five, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli Counties.

(2) Under guidelines adopted by the department, a citizens' organization approved by the department shall be broadly representative of the region, and at least one-third of its members shall be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) A citizens' organization shall be approved under procedures and rules adopted by the department.

(4) A regional council member who is not a full-time employee of the state or of a county is entitled to be reimbursed in an amount to be determined by the department, not to exceed $25, for each day actually and necessarily

engaged in the performance of council duties and for expenses as provided in 2-18-501 through 2-18-503. A council member who is a full-time state or county employee may not be compensated for service as a member of a regional council but shall be reimbursed for expenses as provided for in 2-18-501 through 2-18-503.

(5) A regional council shall:

(a) make an annual written review and evaluation of needs and services within the region and provide a copy of the review and evaluation to the planning and advisory council;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled within the region; and

(c) develop a plan for a system of community-based services for the developmentally disabled within the region and provide a copy of the plan to the planning and advisory council.

History: En. 71-2407 by Sec. 6, Ch. 239, L. 1975; amd. Sec. 5, Ch. 559, L. 1977; R.C.M. 1947, 71-2407; amd. Sec. 3, Ch. 414, L. 1979.

53-20-208. Contributions of counties and municipalities. (1) The boards of county commissioners of the several counties and the governing bodies of municipalities of this state may, in their discretion, contribute to any developmental disabilities facility approved by the department, without regard to whether they are within or outside of their respective jurisdictions. The boards of county commissioners of the counties may levy a tax up to but not to exceed 1 mill on each dollar of taxable property within the county, which shall be in addition to all other county tax levies. All proceeds of the tax, if levied, shall be used for the sole purpose of support of developmental disabilities services.

(2) For the purpose of carrying out the provisions of this section, boards of county commissioners and governing bodies of municipalities may appropriate out of the general fund of their respective counties or municipalities.

History: En. 80-2619 by Sec. 9, Ch. 325, L. 1974; Sec. 80-2619, R.C.M. 1947; amd. and redes. 71-2408 by Sec. 7, Ch. 239, L. 1975; R.C.M. 1947, 71-2408.

Cross-References

County taxation, Title 7, ch. 6, part 25.

Incorporation of property tax levy into county all-purpose levy, 7-6-2523.

53-20-209. Eligibility for services. (1) Any person suspected of a developmental disability shall be eligible for an evaluation to determine whether the person is developmentally disabled.

(2) If the department determines through a screening process that a developmentally disabled person is in need of available services and those services can be provided to him, the department may provide services available under this part and Title 53, chapter 20, part 3.

History: En. 80-2621 by Sec. 11, Ch. 325, L. 1974; Sec. 80-2621, R.C.M. 1947; redes. 71-2409 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2409; amd. Sec. 1, Ch. 245, L. 1985.

53-20-210. Application to reservation Indians. For purposes of this part, Indian people living within federal Indian reservations shall be entitled to all services provided for under this part.

History: En. 80-2622 by Sec. 12, Ch. 325, L. 1974; Sec. 80-2622, R.C.M. 1947; redes. 71-2410 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2410.

Cross-References

Jurisdiction on Indian lands, Title 2, ch. 1, part 13.

53-20-211. No effect on existing facilities. Nothing in this part shall be construed to prevent the continuation of existing developmental disabilities facilities or services in the state.

History: En. 80-2623 by Sec. 13, Ch. 325, L. 1974; Sec. 80-2623, R.C.M. 1947; redes. 71-2411 by Sec. 10, Ch. 239, L. 1975; R.C.M. 1947, 71-2411.

53-20-212. Discrimination forbidden. The services provided under this part shall be made available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with the provisions of Title VI of the federal Civil Rights Act of 1964.

History: En. 80-2624 by Sec. 14, Ch. 325, L. 1974; Sec. 80-2624, R.C.M. 1947; redes. 71-2412 by Sec. 10, Ch. 239, L. 1975; amd. Sec. 16, Ch. 38, L. 1977; R.C.M. 1947, 71-2412.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

53-20-213. Departments to cooperate. The department of corrections and human services, the department of social and rehabilitation services, the department of health and environmental sciences, the department of family services, and the office of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled.

History: En. 71-2414 by Sec. 8, Ch. 239, L. 1975; amd. Sec. 6, Ch. 559, L. 1977; R.C.M. 1947, 71-2414(1); amd. Sec. 94, Ch. 609, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-20-214. Certain transfers of funds authorized. Funds appropriated to the department of corrections and human services, Montana state hospital, or Montana developmental center may be transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of social and rehabilitation services for comprehensive developmental disability systems if residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation.

History: En. 71-2414 by Sec. 8, Ch. 239, L. 1975; amd. Sec. 6, Ch. 559, L. 1977; R.C.M. 1947, 71-2414(2); amd. Sec. 17, Ch. 361, L. 1983; amd. Sec. 7, Ch. 151, L. 1985; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Budget amendments, 5-12-401.
Limit on expenditures, 17-8-103.

Part 3

Community Homes

53-20-301. Purpose. The legislature, in recognition of the wide and varied needs of developmentally disabled persons and of the desirability of meeting these needs on a community level to the fullest extent possible and in order to reduce the need for care in existing state institutions, establishes by this part a community developmentally disabled home program to provide facilities and services for the training and treatment of the developmentally disabled in family-oriented residences and establishes a program to provide such homes through local nonprofit corporations.

History: En. Sec. 1, Ch. 373, L. 1973; amd. Sec. 1, Ch. 149, L. 1974; amd. Sec. 1, Ch. 385, L. 1975; R.C.M. 1947, 71-2001.

53-20-302. Definition of community home — limitation on number of residents. A community home for the developmentally disabled is a family-oriented residence or home designed to provide facilities for two to eight developmentally disabled persons, established as an alternative to existing state institutions. The number of developmentally disabled persons may not exceed eight in such a community home, except that the department of family services may grant written approval for more than eight but not more than twelve persons.

History: En. Sec. 2, Ch. 373, L. 1973; R.C.M. 1947, 71-2002; amd. Sec. 11, Ch. 609, L. 1987.

53-20-303. Parties authorized to establish and operate community homes. (1) Nonprofit corporations or associations may be formed or organized in any community for the purposes of establishing a community home or homes for the developmentally disabled under this part and to receive services, facilities, and funds as the department of social and rehabilitation services and other governmental units may be authorized by law to provide.

(2) The department may also establish a community home or homes for the developmentally disabled under this part and receive services, facilities, and funds as the department and other governmental units may be authorized by law to provide.

History: En. Sec. 3, Ch. 373, L. 1973; amd. Sec. 2, Ch. 149, L. 1974; R.C.M. 1947, 71-2003.

53-20-304. Department contracts with nonprofit corporations — governmental units providing for community homes. (1) The department of social and rehabilitation services may contract with nonprofit corporations or associations to provide facilities and services for the developmentally disabled in community homes for the developmentally disabled and is authorized to expend moneys appropriated or available for that purpose.

(2) Governmental units, including but not limited to counties, municipalities, school districts, or state institutions of higher learning, are authorized to provide, at their own expense, funds, materials, facilities, and services for community homes for the developmentally disabled.

History: **En. Sec. 4, Ch. 373, L. 1973; amd. Sec. 3, Ch. 149, L. 1974; amd. Sec. 2, Ch. 385, L. 1975; R.C.M. 1947, 71-2004.**

Cross-References

Public contracts generally, Title 18, ch. 1.

53-20-305. Local control of community homes — departmental licensing, administration, operation, health and safety standards. (1) Community homes for the developmentally disabled may be under local control, and the nonprofit corporations or associations operating community homes are authorized to establish homes and programs they believe in the best interest of their homes.

(2) (a) A community home for the developmentally disabled shall be licensed annually by the department of family services.

(b) One temporary license may be issued for no longer than 60 days if there are unavoidable delays in the certification process.

(3) (a) The department of family services for the purpose of licensing shall adopt standards and rules concerning the administration, operation, health, and safety of community homes for the developmentally disabled.

(b) The department of health and environmental sciences shall provide advice and recommendations to the department of social and rehabilitation services and the department of family services concerning the standards for health and safety.

History: **En. Sec. 5, Ch. 373, L. 1973; amd. Sec. 4, Ch. 149, L. 1974; R.C.M. 1947, 71-2005; amd. Sec. 1, Ch. 271, L. 1981; amd. Sec. 95, Ch. 609, L. 1987.**

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

One-step licensing — inspection by other department, Title 50, ch. 8.

53-20-306. Federal aid. The department of social and rehabilitation services is authorized to apply for and receive federal-aid money or other assistance which may be available for programs in the nature of the program created by this part.

History: **En. Sec. 6, Ch. 373, L. 1973; amd. Sec. 5, Ch. 149, L. 1974; R.C.M. 1947, 71-2006.**

53-20-307. Health and safety standards for licensing. (1) (a) After initial certification by the state fire prevention and investigation program of the department of justice, community homes must be certified annually for fire and life safety by the department of justice.

(b) The department of justice shall notify the department of social and rehabilitation services and the department of family services when a community home has been certified.

(2) (a) Local health officers shall certify community homes for compliance with health and safety standards. If for any reason the local authority cannot complete the certification in a timely manner, the department of health and environmental sciences is authorized to make the determination on certification.

(b) A reasonable fee may be charged to authorized parties as defined in 53-20-303 for the health and safety certification.

History: En. Sec. 7, Ch. 373, L. 1973; R.C.M. 1947, 71-2007; amd. Sec. 2, Ch. 271, L. 1981; amd. Sec. 96, Ch. 609, L. 1987; amd. Sec. 1, Ch. 706, L. 1991.

Compiler's Comments

Name Change — Code Commissioner Correction: Section 1, Ch. 706, L. 1991, provided: "(1) The name of the state fire marshal is changed to the state fire prevention and investigation program of the department of justice.

(2) Unless inconsistent with [sections 1 through 36] [Ch. 706, L. 1991], wherever the term "state fire marshal" or "fire marshal" appears in the Montana Code Annotated, the code commissioner shall change the term to the "state fire prevention and investigation program of the department of justice", "fire prevention and investigation program" (of the department of justice), or "program", as appropriate. The code commissioner shall also conform internal references and grammar to these changes". As directed, the Code Commissioner has changed the term, as appropriate, wherever it appears in this section. Amendment effective April 29, 1991.

Cross-References

Powers and duties of local Boards of Health, 50-2-116.

State fire prevention and investigation program, Title 50, ch. 3, part 1.

Part 4

Protective Services
(Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-20-401. Renumbered 52-4-101.

53-20-402. Renumbered 52-4-102.

53-20-403. Renumbered 52-4-103.

53-20-404. Repealed. Sec. 112, Ch. 609, L. 1987.

53-20-405. Renumbered 52-4-104.

53-20-406. Renumbered 52-4-105.

53-20-407. Repealed. Sec. 112, Ch. 609, L. 1987.

53-20-408. Renumbered 52-4-106.

53-20-409. Renumbered 52-4-107.

53-20-410. Renumbered 52-4-108.

53-20-411. Repealed. Sec. 112, Ch. 609, L. 1987.

53-20-412. Repealed. Sec. 112, Ch. 609, L. 1987.

53-20-413. Renumbered 52-4-110.

53-20-414. Renumbered 53-20-107.

Histories of Repealed Sections:

53-20-404. En. Sec. 4, Ch. 508, L. 1973; R.C.M. 1947, 71-1904; amd. Sec. 3, Ch. 343, L. 1981.

53-20-407. En. Sec. 7, Ch. 508, L. 1973; R.C.M. 1947, 71-1907.

53-20-411. En. Sec. 11, Ch. 508, L. 1973; R.C.M. 1947, 71-1911.

53-20-412. En. Sec. 12, Ch. 508, L. 1973; R.C.M. 1947, 71-1912.

Part 5

State-Owned Facilities

53-20-501. Primary function of Montana developmental center and Eastmont human services center. The primary functions of the Montana developmental center and the Eastmont human services center are the care, treatment, training, education, and necessary medical treatment of mentally retarded persons.

History: En. Sec. 4, Ch. 111, L. 1971; amd. Sec. 72, Ch. 120, L. 1974; R.C.M. 1947, 80-2604; amd. Sec. 4, Ch. 132, L. 1983; amd. Sec. 8, Ch. 151, L. 1985.

53-20-502. Location of and services provided by Eastmont human services center. The mental retardation center at Glendive is the Eastmont human services center for residential and outpatient care of mentally retarded persons residing in Montana. The center may admit mentally retarded persons not residing in Montana in those circumstances in which Montana has agreed to do so by agreement with any other state. The center shall provide services similar to those provided at the Montana developmental center. However, the center may not be a duplication of the Montana developmental center but shall be an extension thereof.

History: En. Sec. 3, Ch. 255, L. 1967; amd. Sec. 1, Ch. 275, L. 1969; amd. Sec. 1, Ch. 101, L. 1973; amd. Sec. 58, Ch. 120, L. 1974; R.C.M. 1947, 80-2310; amd. Sec. 5, Ch. 132, L. 1983; amd. Sec. 9, Ch. 151, L. 1985.

53-20-503. Repealed. Sec. 7, Ch. 132, L. 1983.

History: En. Sec. 1, Ch. 537, L. 1979.

53-20-504. Powers and duties of department of corrections and human services and department of social and rehabilitation services. The department of corrections and human services and the department of social and rehabilitation services:

(1) may operate or contract with a nonprofit corporation that demonstrates expertise in and the capability of providing programs for the patient population to be served by the facility and for the operation and management of nursing homes;

(2) shall ensure that any state-owned nursing homes are in compliance with federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing and operating nursing homes.

History: En. Sec. 2, Ch. 537, L. 1979; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-20-505. Disposition of facility. Nothing in 53-20-504 prohibits the disposition of the facility as provided in 77-2-302 if an appropriate use for the facility cannot be found by the department of corrections and human services or the department of social and rehabilitation services.

History: En. Sec. 3, Ch. 537, L. 1979; amd. Sec. 6, Ch. 132, L. 1983; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

CHAPTER 21

MENTALLY ILL

Part 1 — Treatment of the Seriously Mentally Ill

53-21-101. Purpose.
53-21-102. Definitions.
53-21-103. Court records to be kept separate.
53-21-104. Powers and duties of mental disabilities board of visitors.
53-21-105. Certification of professional persons required.
53-21-106. Certification of professional persons.
53-21-107 through 53-21-110 reserved.
53-21-111. Voluntary admission.
53-21-112. Voluntary admission of minors.
53-21-113. Costs of committing a patient already voluntarily admitted — transportation costs for voluntary admission.
53-21-114. Notice of rights to be given.
53-21-115. Procedural rights.
53-21-116. Right to be present at hearing or trial — appointment of counsel.
53-21-117. Right to representation by own attorney.
53-21-118. Right to examination by professional person of own choosing.
53-21-119. Waiver of rights.
53-21-120. Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited.
53-21-121. Petition for commitment — contents of — notice of.
53-21-122. Petition for commitment — filing of — initial hearing on.
53-21-123. Examination of respondent following initial hearing — recommendation of professional person.
53-21-124. Detention of respondent pending hearing or trial.
53-21-125. Request for jury trial.
53-21-126. Trial or hearing on petition.
53-21-127. Posttrial disposition.
53-21-128. Petition for extension of commitment period.
53-21-129. Emergency situation — petition — detention.
53-21-130. Transfer or commitment to mental health facility from other institutions.

53-21-131. Appeal procedure.
53-21-132. Cost of examination and commitment.
53-21-133. Transfer to nonstate facilities.
53-21-134. Receipt of seriously mentally ill nonresident person pending return to home state.
53-21-135. Establishment of treatment plan for mentally ill person.
53-21-136. Compliance with treatment plan.
53-21-137. Supplemental hearing.
53-21-138. Diversion of certain mentally ill persons from jail.
53-21-139. Crisis intervention programs.
53-21-140 reserved.
53-21-141. Civil and legal rights of person committed.
53-21-142. Rights of persons admitted to facility.
53-21-143. Right not to be fingerprinted.
53-21-144. Rights concerning photographs.
53-21-145. Right to be free from unnecessary or excessive medication.
53-21-146. Right to be free from physical restraint and isolation.
53-21-147. Right not to be subjected to experimental research.
53-21-148. Right not to be subjected to hazardous treatment.
53-21-149 through 53-21-160 reserved.
53-21-161. Qualifications of professional persons.
53-21-162. Establishment of patient treatment plan — patient's rights.
53-21-163. Examination following commitment.
53-21-164. Repealed.
53-21-165. Records to be maintained.
53-21-166. Records to be confidential — exceptions.
53-21-167. Patient labor.
53-21-168. Statement of rights to be furnished and posted.
53-21-169. Protection and advocacy system — designation and authority.
53-21-170 through 53-21-180 reserved.
53-21-181. Discharge during or at end of initial commitment period — patient's right to referral.
53-21-182. Court-ordered release to alternative placement or treatment.
53-21-183. Release conditioned on receipt of outpatient care.
53-21-184. Patients for whom release and discharge provisions inapplicable.
53-21-185. Care and treatment following release.
53-21-186. Support of patient conditionally released.
53-21-187. Clothing for patients discharged or conditionally released.
53-21-188. Maintenance of indigent patients on discharge.
53-21-189. Fact of evaluation or treatment not to be used for discrimination.
53-21-190. Fact of evaluation or treatment not to be used in subsequent court proceeding — exception.
53-21-191 through 53-21-194 reserved.
53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities — petition.
53-21-196. Detention of conditionally released patient pending hearing.
53-21-197. Hearing on rehospitalization petition — revocation of conditional release.
53-21-198. Extension of conditions of release — hearing.

Part 2 — Community Mental Health Centers

53-21-201. Definitions.
53-21-202. Duties of department.
53-21-203. Departmental contracts with mental health corporations.
53-21-204. Mental health corporations.
53-21-205. Continuation of services.
53-21-206. Availability of services.
53-21-207 through 53-21-210 reserved.
53-21-211. Purpose.
53-21-212. Definitions.
53-21-213. Joint review and inspection.
53-21-214. Authorization for employees to perform functions of other state agency.

Part 3 — Warm Springs State Hospital
(Repealed. Sec. 26, Ch. 361, L. 1983)

Part 4 — Community-Based Nursing Homes
Center for the Aged

53-21-401. Legislative intent.
53-21-402. Powers and duties of department of corrections and human services.
53-21-403 through 53-21-410 reserved.
53-21-411. Location and function of center for the aged.
53-21-412. Transfer of patients between Montana state hospital and center.
53-21-413. Discharge of patients.

Part 5 — Youth Treatment

53-21-501. Repealed.
53-21-502. Repealed.
53-21-503 and 53-21-504 reserved.
53-21-505. Repealed.
53-21-506. No commitment to Montana state hospital.
53-21-507. Repealed.

Part 6 — Montana State Hospital

53-21-601. Location and primary function of hospital.
53-21-602. Transfer of patients from Galen to mental institution.
53-21-603. Alcoholic treatment center.

Chapter Cross-References

Treatment of mentally ill — Montana State Hospital, 53-21-601.

Part 1

Treatment of the Seriously Mentally Ill

Part Cross-References

Incompetent persons — capacity as party, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Liability of person of unsound mind for own torts, 27-1-711.

When person entitled to bring action is under a disability, 27-2-401.

Ground for invalidity of marriage, 40-1-402.

Public Administrator as conservator when no other appropriate person, 72-5-415.

53-21-101. Purpose. The purpose of this part is to:

(1) secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care; and

(4) assure that due process of law is accorded any person coming under the provisions of this part.

History: En. 38-1301 by Sec. 1, Ch. 466, L. 1975; amd. Sec. 1, Ch. 546, L. 1977; R.C.M. 1947, 38-1301.

53-21-102. *(Temporary)* **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.

(8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat thereof but which:

(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be committed;

(c) has deprived the person of the capacity to make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill, within the meaning of this section, or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

(9) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally ill or seriously mentally ill.

(15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic or is mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(16) "State hospital" means the Montana state hospital. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-102. *(Effective July 1, 1997)* **Definitions.** As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No

correctional institution or facility or jail is a mental health facility within the meaning of this part.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(13) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

(15) "State hospital" means the Montana state hospital.

History: Ap. p. 38-1302 by Sec. 2, Ch. 466, L. 1975; amd. Sec. 9, Ch. 37, L. 1977; amd. Sec. 2, Ch. 546, L. 1977; Sec. 38-1302, R.C.M. 1947; (15)En. 38-106.1 by Sec. 3, Ch. 120, L. 1974; Sec. 38-106.1, R.C.M. 1947; R.C.M. 1947, 38-106.1, 38-1302; amd. Sec. 1, Ch. 547, L. 1979; amd. Sec. 18, Ch. 361, L. 1983; amd. Sec. 1, Ch. 578, L. 1983; amd. Sec. 1, Ch. 376, L. 1987; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-21-103. Court records to be kept separate. Records and papers in proceedings under this part shall be maintained separately by the clerks of the several courts. Five days prior to the release of a respondent or patient committed to a mental health facility, the facility shall notify the clerk of the court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indexes of cases in the court unless the court orders the record opened for good cause shown.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(5); amd. Sec. 2, Ch. 547, L. 1979.

53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board shall be an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to a mental health facility affected by this part may be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility in resolving any grievance he may have concerning his commitment or his course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility shall be to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine his files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate,

after waiting a reasonable time for a response from such professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor and shall, as provided in 5-11-210, report to the legislature concerning the status of the mental health facilities and treatment programs which it has inspected.

History: En. 38-1330 by Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977; R.C.M. 1947, 38-1330(2) thru (9); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 41, Ch. 112, L. 1991.

Compiler's Comments

1991 Amendment: In (8) inserted reference to 5-11-210 and after "report to" deleted "each session of". Amendment effective March 20, 1991.

Cross-References

Procedural rights, 53-20-112.

Denial of legal rights, 53-20-141.

53-21-105. Certification of professional persons required. No person may act in a professional capacity as provided for in this part unless he is a professional person as defined in 53-21-102.

History: En. Sec. 2, Ch. 578, L. 1983.

53-21-106. *(Temporary)* **Certification of professional persons.** (1) The department shall certify professional persons as defined in 53-21-102(12)(b) for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-106. *(Effective July 1, 1997)* **Certification of professional persons.** (1) The department shall certify professional persons as defined in 53-21-102(10)(b) for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons as defined in 53-21-102(10)(b).

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification.

History: En. Sec. 3, Ch. 578, L. 1983; amd. Sec. 2, Ch. 376, L. 1987.

Cross-References

Qualifications of professional person, 53-21-161.

53-21-107 through 53-21-110 reserved.

53-21-111. Voluntary admission. (1) Nothing in this part may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department. It is not valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. A statement of the rights of the person voluntarily applying for admission, as set out in this part, including the right to release, shall be furnished to the patient within 12 hours.

(2) Any applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder. The professional person must then obtain confirmation from a community mental health center that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment. The department shall adopt rules to establish a procedure whereby a professional person shall obtain the confirmation from a community mental health center as required in this section.

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past his written request for release. A mental health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility must notify all applicants of such rules and post such rules as provided in 53-21-168.

(4) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(1) thru (3), (6); amd. Sec. 3, Ch. 547, L. 1979; amd. Sec. 1, Ch. 603, L. 1985.

53-21-112. Voluntary admission of minors. (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by:

(a) a facility that is not a state institution; or

(b) a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(3) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 53-21-111(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor at the minor's request or at any time he is faced with potential legal proceedings.

(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the application for admission shall be treated as a petition for involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(7) thru (9); amd. Sec. 14, Ch. 38, L. 1979; amd. Sec. 4, Ch. 547, L. 1979; amd. Sec. 12, Ch. 363, L. 1983; amd. Sec. 12, Ch. 14, Sp. L. June 1986.

Cross-References

Validity of consent of minor for health services, 41-1-402.

53-21-113. Costs of committing a patient already voluntarily admitted — transportation costs for voluntary admission. (1) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced shall be borne by the county of the patient's residence at the time of admission.

(2) The costs of transportation to a mental health facility under 53-21-111 and 53-21-112 shall be provided by the welfare department of the county of the patient's residence. However, if protective proceedings under Title 72, chapter 5, have been or are initiated with respect to the person, the welfare department may seek reimbursement. If no one else is available to transport him, the sheriff shall transport the person.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(4), (5).

53-21-114. Notice of rights to be given. (1) Whenever a person is involuntarily detained pursuant to 53-21-121 through 53-21-126, the person shall at the time of detention be informed of his constitutional rights and his rights under this part. Within 3 days of such detention, he must also be informed in writing by the county attorney of such rights.

(2) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised in writing of his right to appeal

the order by the court at the conclusion of any hearing the result of which such an order may be entered.

History: (1)En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; R.C.M. 1947, 38-1304(part), 38-1309(4); amd. Sec. 1, Ch. 522, L. 1983; amd. Sec. 1, Ch. 537, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in three places after reference to detention, deleted reference to examination.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

53-21-115. *(Temporary)* **Procedural rights.** In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(2) the right to know, in advance of any hearing, the names and addresses of any witnesses who will testify in support of the petition;

(3) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(4) the right in any hearing to cross-examine witnesses;

(5) the right to be represented by counsel;

(6) the right to remain silent;

(7) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(8) the right to view and copy all petitions on file with the court concerning him;

(9) the right to be examined by a professional person of his choice when such professional person is willing and reasonably available;

(10) the right to be dressed in his own clothes at any hearing held pursuant to this part; and

(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-115. *(Effective July 1, 1997)* **Procedural rights.** In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(3) the right in any hearing to cross-examine witnesses;

(4) the right to be represented by counsel;

(5) the right to remain silent;

(6) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(7) the right to view and copy all petitions on file with the court concerning him;

(8) the right to be examined by a professional person of his choice when such professional person is willing and reasonably available;

(9) the right to be dressed in his own clothes at any hearing held pursuant to this part; and

(10) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(4); amd. Sec. 5, Ch. 547, L. 1979; amd. Sec. 3, Ch. 376, L. 1987.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

53-21-116. *(Temporary)* **Right to be present at hearing or trial — appointment of counsel.** The person alleged to be mentally ill or seriously mentally ill has the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-116. *(Effective July 1, 1997)* **Right to be present at hearing or trial — appointment of counsel.** The person alleged to be seriously mentally ill has the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 4, Ch. 376, L. 1987.

53-21-117. Right to representation by own attorney. The respondent or the friend of respondent appointed by the court may secure an attorney of his own choice and at his own expense to represent the respondent.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

53-21-118. Right to examination by professional person of own choosing. (1) The respondent, his attorney, or the friend of respondent appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(2) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the

requested examination who will be compensated from the public funds of the county where the respondent resides.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

53-21-119. Waiver of rights. (1) A person may waive his rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by his counsel and friend of respondent acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, his rights may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court shall appoint a guardian ad litem for him.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(part); amd. Secs. 6, 14, Ch. 547, L. 1979.

53-21-120. *(Temporary)* **Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited.** (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) Except as provided in 53-21-124, a person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

(5) No detention may be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)(b).

(6) No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part.

53-21-120. *(Effective July 1, 1993)* **Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited.** (1) A person detained pursuant to this part must be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. The trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. A person may not be detained in any hospital or other medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

(3) A person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

(5) Detention may not be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)(b).

(6) A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic or is mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-120. *(Effective July 1, 1997)* **Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited.** (1) A person detained pursuant to this part must be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. The trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. A person may not be detained in any

hospital or other medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

(3) A person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(5); amd. Sec. 7, Ch. 547, L. 1979; amd. Sec. 5, Ch. 376, L. 1987; amd. Sec. 1, Ch. 360, L. 1989; amd. Sec. 1, Ch. 636, L. 1991.

Compiler's Comments

1991 Amendment: At beginning of (3) deleted "Except as provided in 53-21-124"; and made minor changes in style. Amendment effective July 1, 1993.

53-21-121. *(Temporary)* **Petition for commitment — contents of — notice of.** (1) The county attorney, upon the written request of any person having direct knowledge of the facts, may file a petition with the court:

(a) alleging that there is a person within the county who is seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months; or

(b) alleging that there is a person within the county who is mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 30 days.

(2) The petition shall contain:

(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought; if there is no attorney, there shall be a statement as to whether to the best knowledge of the person requesting the petition the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition shall be hand-delivered to the respondent and to his counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent shall be hand-delivered or mailed to the person or persons legally responsible for care, support, and

maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-121. *(Effective July 1, 1997)* **Petition for commitment — contents of — notice of.** (1) The county attorney, upon the written request of any person, may file a petition with the court alleging that there is a person within the county who is seriously mentally ill and requesting that the person be committed to a mental health facility for a period of no more than 3 months.

(2) The petition shall contain:

(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as friend of respondent;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought; if there is no attorney, there shall be a statement as to whether to the best knowledge of the person requesting the petition the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

(3) Notice of the petition shall be hand-delivered to the respondent and to his counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent shall be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 6, Ch. 376, L. 1987.

Cross-References

Mileage and expenses of Sheriff for delivery of mentally ill persons, 7-32-2144.

53-21-122. *(Temporary)* **Petition for commitment — filing of — initial hearing on.** (1) The petition shall be filed with the clerk of court who shall immediately notify the judge.

(2) (a) If a judge is available, he shall consider the petition, and if he finds no probable cause, it shall be dismissed.

(b) (i) If the judge finds probable cause, counsel shall be immediately appointed for the respondent, and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition.

(ii) The judge shall:

(A) appoint a professional person;

(B) appoint a friend of respondent; and

(C) set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(iii) The desires of the respondent shall be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-122. *(Effective July 1, 1997)* **Petition for commitment — filing of — initial hearing on.** (1) The petition shall be filed with the clerk of court who shall immediately notify the judge.

(2) If a judge is available, he shall consider the petition, and if he finds no probable cause, it shall be dismissed. If the judge finds probable cause, counsel shall be immediately appointed for the respondent, and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this part, and the substantive effect of the petition. The respondent may at this appearance

object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent shall be taken into consideration in the appointment of the friend of respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(3); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 7, Ch. 376, L. 1987.

53-21-123. *(Temporary)* **Examination of respondent following initial hearing — recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent shall be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of his findings in person or by phone and shall make a written report of his examination to the court, with copies to the respondent's attorney and the county attorney.

(2) The following action shall be taken based on the professional person's findings:

(a) If he recommends dismissal, he shall additionally notify counsel and the respondent, if he has been detained, shall be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If he finds that commitment proceedings should continue, the hearing shall be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. Such reasons shall be set forth in the order, along with the amount of additional time needed. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-123. *(Effective July 1, 1997)* **Examination of respondent following initial hearing — recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent shall be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of his findings in person or by phone and shall make a written report of his examination to the court, with copies to the respondent's attorney and the county attorney.

(2) The following action shall be taken based on the professional person's findings:

(a) If he recommends dismissal, he shall additionally notify counsel and the respondent shall be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If he finds that commitment proceedings should continue, the hearing shall be held as scheduled.

(3) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. Such reasons shall be set forth in the order, along with the amount of additional time needed.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(4); amd. Sec. 8, Ch. 376, L. 1987.

53-21-124. *(Temporary)* **Detention of respondent pending hearing or trial.** (1) The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith.

(2) In the event of detention, the respondent shall be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others as provided in 53-21-120. A respondent may be detained in a jail or other correctional facility only if no appropriate mental health facility is immediately available for placement. When the respondent is detained in a jail or other correctional facility, the jail or other facility shall immediately notify the regional office of the nearest community mental health center, as defined in 53-21-201, that a person detained in the jail or correctional facility is in need of an appropriate placement. Upon notification, the community mental health center shall identify an appropriate placement for the respondent, in accordance with the requirements of 53-21-120. Until a placement is identified, the community mental health center shall report on the status of the placement to the jail or correctional facility within every 12-hour period, including weekends and holidays. When an appropriate placement has been identified, the court must be promptly notified and the respondent must be transferred to that facility as soon as reasonably practical.

(3) If the respondent is detained, he shall have the right to be examined additionally by a professional person of his choice. Unless objection is made

by counsel for the respondent, he shall continue to be evaluated and treated by the professional person pending the hearing.

53-21-124. *(Effective July 1, 1993)* **Detention of respondent pending hearing or trial — jail prohibited.** (1) The court may not order detention of a respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel must be orally notified immediately. Counsel for the respondent may then request a detention hearing, which must be held forthwith.

(2) In the event of detention, the respondent must be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others as provided in 53-21-120.

(3) If the respondent is detained, he has the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he must continue to be evaluated and treated by the professional person pending the hearing.

(4) A respondent may not be detained in a jail or other correctional facility pending a hearing or trial to determine whether the respondent should be committed to a mental health facility.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(5); amd. Sec. 2, Ch. 360, L. 1989; amd. Sec. 4, Ch. 312, L. 1991; amd. Sec. 2, Ch. 636, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 312 in (2) of temporary version, in third sentence after "regional", deleted "central" and in three places substituted reference to community mental health center for reference to mental health facility. Amendment effective July 1, 1991.

Chapter 636 in (2) deleted second through sixth sentences authorizing detention of respondent in jail or correctional facility if no mental health facility is available, requiring immediate notification of jail detention and need for mental health facility placement, and requiring identification of appropriate placement, report on status of placement to jail or correctional facility within every 12-hour period, and prompt notification of court and transfer of respondent to mental health facility when reasonably practical; inserted (4) prohibiting detention of respondent in jail or correctional facility pending hearing or trial to determine issue of commitment; and made minor changes in style. Amendment effective July 1, 1993.

Cross-References

Mileage and expenses of Sheriff for delivery of mentally ill persons, 7-32-2144.

53-21-125. Request for jury trial. At any time prior to the date set for hearing, the respondent, through his counsel, may request a jury trial, whereupon the time set for hearing shall be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury shall be selected in the manner provided in 3-15-506 and a date set for trial by jury not later than 7 days, exclusive of Saturdays, Sundays, and holidays.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part).

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

53-21-126. *(Temporary)* **Trial or hearing on petition.** (1) The respondent shall be present unless his presence has been waived as provided in

53-21-119(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is mentally ill or seriously mentally ill within the meaning set forth in this part.

(2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is mentally ill or seriously mentally ill. Testimony from a professional person or others must be received on each element of the definition of mentally ill or seriously mentally ill as those terms are defined in 53-21-102.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-126. *(Effective July 1, 1997)* **Trial or hearing on petition.** (1) The respondent shall be present unless his presence has been waived as provided in 53-21-119(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is seriously mentally ill within the meaning set forth in this part.

(2) The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana Rules of Civil Procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the respondent is seriously mentally ill. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not

admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is seriously mentally ill. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent is suffering from a mental disorder; and

(b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat thereof or has deprived the person afflicted of the ability to protect his life or health.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 8, Ch. 547, L. 1979; amd. Sec. 9, Ch. 376, L. 1987.

Cross-References

Montana Rules of Civil Procedure, Title 25, ch. 20.

53-21-127. *(Temporary)* **Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not mentally ill or seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

(3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that he receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the

reason therefor if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless he is financially able.

(4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-127. *(Effective July 1, 1997)* **Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

History: En. 38-1305, 38-1306 by Secs. 5, 6, Ch. 466, L. 1975; amd. Secs. 5, 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part), 38-1306(1); amd. Sec. 9, Ch. 547, L. 1979; amd. Sec. 10, Ch. 376, L. 1987.

Cross-References

Mileage and expenses of Sheriff for delivery of mentally ill persons, 7-32-2144.

53-21-128. *(Temporary)* **Petition for extension of commitment period.** (1) To extend the 3-month period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be followed:

(a) Not less than 2 calendar weeks prior to the end of the 3-month period, the professional person in charge of the patient at the place of detention may petition the district court in the county where the patient is detained for extension of the detention period unless otherwise ordered by the original committing court. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) To extend the period of treatment provided for in 53-21-127(3), the procedure set forth in this subsection (2) must be followed:

(a) Not less than 7 days prior to the end of the 30-day period of treatment ordered under 53-21-127(3), the professional person in charge of the respondent's care may petition the court for extension of the treatment period. The petition must be accompanied by a written report and evaluation of the respondent's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the respondent, the course of treatment which has been undertaken for the respondent, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the respondent, his next of kin, if reasonably available, the friend of respondent appointed by the court, if any, and the respondent's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 5 days from the receipt of the request and notify the same people, including the professional person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment for a period not to exceed 30 days.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition under 53-21-121(1)(b) for the original treatment except that the respondent is not entitled to trial by jury. The hearing shall be held in the district court for the county in which the treatment is being supervised unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial proceedings.

(d) If upon the hearing the court finds the respondent not mentally ill within the meaning of this part, the petition shall be dismissed. If the court finds that the respondent continues to be mentally ill, the court shall order treatment for the respondent for a period not to exceed 30 days. In its order, the court shall describe what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not considered suitable. The court may not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the respondent. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(3) Further extensions of the period of detention provided for in 53-21-127(2) may be obtained under the same procedure described in subsection (1) except that the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1).

(4) The period of treatment provided for in 53-21-127(3) may be extended only once under this section. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-128. *(Effective July 1, 1997)* **Petition for extension of commitment period.** (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of detention provided for in 53-21-127(2), the professional person in charge of the patient at the place of detention may petition the district court in the county where the patient is detained for extension of the detention period unless otherwise ordered by the original committing court. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

(c) Procedure on the petition for extension when a hearing has been requested shall be the same in all respects as the procedure on the petition for the original 3-month commitment except the patient is not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, shall be paid by the county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient therapy, or other order as set forth in 53-21-127(2) except that no order may affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) Further extensions may be obtained under the same procedure described in subsection (1) except that the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1).

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(3), (4); amd. Secs. 10, 14, Ch. 547, L. 1979; amd. Sec. 11, Ch. 376, L. 1987; amd. Sec. 1, Ch. 434, L. 1987.

53-21-129. Emergency situation — petition — detention. (1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and as a result of serious mental illness to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file his findings with the county attorney who, if he determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining his actions.

(3) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any county for the detention of persons held pursuant to this section. Whenever an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility must certify to the county attorney that the facility does not have adequate room at that time.

(4) However, before any person is transferred to the state hospital under this section, the state hospital must be notified prior to transfer and must state that a bed is available for the person.

History: En. 38-1307 by Sec. 7, Ch. 466, L. 1975; amd. Sec. 7, Ch. 546, L. 1977; R.C.M. 1947, 38-1307; amd. Sec. 1, Ch. 560, L. 1983.

53-21-130. Transfer or commitment to mental health facility from other institutions. No person who is in the custody of the department for any purpose other than treatment of severe mental illness may be transferred or committed to a mental health facility for more than 10 days unless the transfer or commitment is effected according to the procedures set out in this part. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer shall be given immediately to any assigned counsel at the mental health facility and to the parents of minors, guardians, friends of respondent, or conservators, as the case may be.

History: En. 38-1310 by Sec. 10, Ch. 466, L. 1975; amd. Sec. 10, Ch. 546, L. 1977; R.C.M. 1947, 38-1310; amd. Sec. 14, Ch. 547, L. 1979.

53-21-131. Appeal procedure. Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases, except that the appeal may be taken at any time within 90 days of the actual service of the written notice of the right to appeal required by 53-21-114 or within 90 days after discharge, whichever is later. The patient shall not be released pending appeal unless ordered by the court. The appeal shall have priority above all other matters before the supreme court.

History: En. 38-1311 by Sec. 11, Ch. 466, L. 1975; R.C.M. 1947, 38-1311; amd. Sec. 2, Ch. 522, L. 1983.

Cross-References

Applicability of Montana Rules of Appellate Procedure, Rule 52(c), M.R.App.P. (see Title 25, ch. 21).

53-21-132. Cost of examination and commitment. (1) The cost of the examination, committal, and taking a person who is seriously mentally ill to a mental health facility must be paid by the county in which he resides at the time he is adjudged to be seriously mentally ill. The sheriff must be allowed the actual expenses incurred in taking a person who is seriously mentally ill to the facility, as provided by 7-32-2144.

(2) The county of residence shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody of the respondent. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

History: (1)En. Sec. 2311, Pol. C. 1895; re-en. Sec. 1145, Rev. C. 1907; re-en. Sec. 1442, R.C.M. 1921; Cal Pol. C. Sec. 2175; re-en. Sec. 1442, R.C.M. 1935; amd. Sec. 33, Ch. 466, L. 1975; Sec. 38-212, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1309, R.C.M. 1947; R.C.M. 1947, 38-212, 38-1309(part).

53-21-133. Transfer to nonstate facilities. (1) If a person is committed under the provisions of this part and is eligible for hospital care or treatment by an agency of the United States and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or institution operated by such an agency and in which a person is so hospitalized shall be vested with the same powers as the superintendent of the state hospital with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so hospitalized and to determine the necessity for continuance of their hospitalization.

(2) Consistent with other provisions of this part, a person committed under this part for a period of 3 months or longer may be committed by the court to the custody of friends or next of kin residing outside the state or to a mental health facility located outside the state if the out-of-state facility agrees to receive the patient. No such commitment shall be for a longer period of time than is permitted within the state. If the patient is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer out of Montana of persons committed under the provisions of this part or into Montana under the laws of another jurisdiction shall be governed by the provisions of the Interstate Compact on Mental Health.

History: En. 38-1314 by Sec. 14, Ch. 466, L. 1975; R.C.M. 1947, 38-1314.

Cross-References

Interstate Compact on Mental Health, Title 53, ch. 22.

53-21-134. Receipt of seriously mentally ill nonresident person pending return to home state. A person who is seriously mentally ill and not a resident of this state may be received into the state hospital for a period not to exceed 30 days pending return to the state of his residence.

History: En. Sec. 1, Ch. 198, L. 1963; amd. Sec. 8, Ch. 120, L. 1974; amd. Sec. 2, Ch. 37, L. 1977; R.C.M. 1947, 38-120.

Cross-References

Residence — rules for determining, 1-1-215.

53-21-135. *(Temporary)* **Establishment of treatment plan for mentally ill person.** (1) A person ordered to receive treatment under 53-21-127(3) must have an individualized treatment plan.

(2) The treatment plan must be developed by appropriate professional persons and must be implemented no later than 5 days after the treatment order has been made.

(3) The treatment plan must contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals; and

(e) criteria for release to less restrictive treatment conditions and criteria for discharge.

(4) The treatment plan may include prescription by a physician of reasonable and appropriate medication that is consistent with accepted medical standards. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

History: En. Sec. 12, Ch. 376, L. 1987.

53-21-136. *(Temporary)* **Compliance with treatment plan.** If the respondent fails to comply or clearly refuses to comply with all or part of the treatment plan, the professional person appointed under 53-21-122 shall make all reasonable efforts to solicit the respondent's compliance. Such effort must be documented and reported to the court with a recommendation to the court as to whether the respondent should:

(1) have his case dismissed; or

(2) be given a supplemental hearing. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

History: En. Sec. 13, Ch. 376, L. 1987.

53-21-137. *(Temporary)* **Supplemental hearing.** (1) If the respondent requests a hearing to prove he has complied with the treatment plan as provided in 53-21-136, the hearing must be scheduled within 5 days. The respondent, his attorney, the friend of respondent, and the designated professional person must be notified at least 48 hours in advance.

(2) At the hearing, the court must determine whether the respondent has failed to comply with the treatment plan established pursuant to 53-21-135.

(3) (a) If the court determines that the respondent has failed or refused to comply with the treatment plan, it may order the respondent to comply with the treatment plan for the remainder of the 30-day period.

(b) If the respondent no longer meets the definition of mentally ill, the court shall discharge the respondent from the order and dismiss the case. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

History: En. Sec. 14, Ch. 376, L. 1987.

53-21-138. *(Effective July 1, 1993)* **Diversion of certain mentally ill persons from jail.** (1) The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be seriously mentally ill, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is seriously mentally ill, the sheriff or administrator of the jail shall:

(a) request services from a crisis intervention program established by the department as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-212; or

(c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment and care of persons who are seriously mentally ill.

(3) As used in this section, the term “minor misdemeanor offense” includes but is not limited to a nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

History: En. Sec. 3, Ch. 636, L. 1991.

Compiler’s Comments

Effective Date: Section 8, Ch. 636, L. 1991, provided that this section is effective July 1, 1993.

53-21-139. *(Effective July 1, 1993)* **Crisis intervention programs.** (1) The department shall, subject to available appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour emergency admission and care of seriously mentally ill persons in a temporary, safe environment in the community as an alternative to placement in jail.

(2) The department shall provide information and technical assistance regarding needed services and assist counties in developing county plans for crisis intervention services and for the provision of alternatives to jail placement.

(3) The department may enter into an interagency agreement with the department of social and rehabilitation services to provide crisis intervention programs as:

(a) a rehabilitative service under 53-6-101(3)(j); and

(b) a targeted case management service authorized in 53-6-101(3)(n).

History: En. Sec. 4, Ch. 636, L. 1991.

Compiler's Comments

Effective Date: Section 8, Ch. 636, L. 1991, provided that this section is effective July 1, 1993.

53-21-140 reserved.

53-21-141. Civil and legal rights of person committed. (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except insofar as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally. In the case of a person admitted to a program or facility for the purpose of receiving mental health services, an individual employed by or receiving remuneration from the program or facility may not act as the person's guardian or representative unless the program or facility can demonstrate that no other person is available or willing to act as the person's guardian or representative.

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection does not affect, however, a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(1) thru (4); amd. Sec. 11, Ch. 547, L. 1979; amd. Sec. 2, Ch. 579, L. 1991.

Compiler's Comments

1991 Amendment: In (2) inserted last sentence relating to guardian or representative of person admitted to receive mental health services.

Cross-References

Doctor-patient privilege, 26-1-805.

Psychologist-client privilege, 26-1-807.

Persons under disability guardianship and conservatorship, Title 72, ch. 5.

53-21-142. Rights of persons admitted to facility. Patients admitted to a mental health facility, whether voluntarily or involuntarily, shall have the following rights:

(1) Patients have a right to privacy and dignity.

(2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. Patients must be accorded the right to appropriate treatment and related services in a setting and under conditions that:

(a) are the most supportive of the patient's personal liberty; and

(b) restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders.

(3) Patients shall have the same rights to visitation and reasonable access to telephone communications, including the right to converse with others privately, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients shall have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.

(4) Patients shall have an unrestricted right to send sealed mail. Patients shall have an unrestricted right to receive sealed mail from their attorneys, private physicians and other professional persons, the mental disabilities board of visitors, courts, and government officials. Patients shall have a right to receive sealed mail from others except to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.

(5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.

(6) Patients have a right to wear their own clothes and to keep and use their own personal possessions, including toilet articles, except insofar as such clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the patient's throughout his stay at the facility. The facility shall make provision for the laundering of patient clothing.

(7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.

(8) Patients have the right to religious worship. Provisions for such worship shall be made available to all patients on a nondiscriminatory basis. No individual shall be required to engage in any religious activities.

(9) Patients have a right to regular physical exercise several times a week. Moreover, it shall be the duty of the facility to provide facilities and equipment for such exercise. Patients have a right to be outdoors at regular and frequent intervals in the absence of contrary medical considerations.

(10) Patients have the right to be provided, with adequate supervision, suitable opportunities for interaction with members of the opposite sex except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that such interaction is inappropriate to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with his medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities shall be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities shall be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to assure the accomplishment of this goal:

(a) regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean, and attractive condition shall be developed and implemented;

(b) there must be special provision made for geriatric and other nonambulatory patients to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of every facility shall be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) every facility must meet all fire and safety standards established by the state and locality. In addition, any hospital shall meet such provisions of the life safety code of the national fire protection association as are applicable to hospitals. Any hospital shall meet all standards established by the state for general hospitals insofar as they are relevant to psychiatric facilities.

(14) A patient at a facility has the right:

(a) to be informed of the rights described in this section at the time of his admission and periodically thereafter, in language and terms appropriate to the patient's condition and ability to understand;

(b) to assert grievances with respect to infringement of the rights described in this section, including the right to have a grievance considered in a fair and timely manner according to an impartial grievance procedure that must be provided for by the facility; and

(c) to exercise the rights described in this section without reprisal and may not be denied admission to the facility as reprisal for the exercise of the rights described in this section.

(15) In order to assist a person admitted to a program or facility in the exercise or protection of the patient's rights, the patient's attorney, advocate, or legal representatives shall have reasonable access to:

(a) the patient;

(b) the program or facility areas where the patient has received treatment or has resided or the areas to which he has had access; and

(c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

(16) A person admitted to a facility shall have access to any available individual or service that provides advocacy for the protection of the person's rights and that assists the person in understanding, exercising, and protecting his rights as described in this section.

(17) This section may not:

(a) obligate a professional person to administer treatment contrary to the professional's clinical judgment;

(b) prevent a facility from discharging a patient for whom appropriate treatment, consistent with the clinical judgment of a professional person responsible for the patient's treatment, is or has become impossible to administer because of the patient's refusal to consent to the treatment;

(c) require a facility to admit a person who has, on prior occasions, repeatedly withheld consent to appropriate treatment; or

(d) obligate a facility to treat a person admitted to the facility solely for diagnostic evaluation.

History: En. 38-1317 by Sec. 17, Ch. 466, L. 1975; R.C.M. 1947, 38-1317; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 3, Ch. 579, L. 1991.

Compiler's Comments

1991 Amendment: In (2) inserted second sentence, (2)(a), and (2)(b) requiring certain conditions and setting for appropriate treatment and related services; in (3), in first sentence after "reasonable access to", substituted "telephone communications, including the right to converse with others privately" for "private telephone communications as patients at any public hospitals"; and inserted (14), (15), (16), and (17) relating to patient's rights, rights of patient's legal representative, access to advocacy services, and disclaimers, respectively.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adult rights, Art. II, sec. 14, Mont. Const.

53-21-143. Right not to be fingerprinted. No person admitted to or in a mental health facility shall be fingerprinted unless required by other provisions of law.

History: **En. 38-1315 by Sec. 15, Ch. 466, L. 1975; R.C.M. 1947, 38-1315.**

53-21-144. Rights concerning photographs. (1) A person admitted to a mental health facility may be photographed upon admission for identification and the administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical photographs shall be taken or used without consent of the patient or, if applicable, the patient's legal guardian.

History: **En. 38-1316 by Sec. 16, Ch. 466, L. 1975; R.C.M. 1947, 38-1316; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 4, Ch. 579, L. 1991.**

Compiler's Comments

1991 Amendment: In (2), after "without consent of", inserted "the patient or, if applicable" and after "legal guardian" deleted "or the friend of respondent appointed by the court".

53-21-145. Right to be free from unnecessary or excessive medication. Patients have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The attending physician shall be responsible for all medication given or administered to a patient. The use of medication shall not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication shall be kept in his medical records. The department of health and environmental sciences shall adopt rules governing attending physician review of the drug regimen of each patient under his care in a mental health facility, except that the drug regimen of inpatients in hospitals shall be reviewed no less than weekly. Except in the case of outpatients, all prescriptions shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program.

History: **En. 38-1319 by Sec. 19, Ch. 466, L. 1975; R.C.M. 1947, 38-1319; amd. Sec. 1, Ch. 429, L. 1987.**

53-21-146. Right to be free from physical restraint and isolation. Patients have a right to be free from physical restraint and isolation. Except for emergency situations in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order which explains the rationale for such action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation. Emergency use of restraints or isolation shall be for no more than 1 hour, by which time a professional person shall have been consulted and shall have entered an appropriate order in writing. Such written order shall be effective for no more than 24 hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care shall be taken to monitor his physical and psychiatric condition and to provide for his physical needs and comfort. Physical restraint may not be used as punishment, for the convenience of the staff, or as a substitute for a treatment program.

History: **En. 38-1320 by Sec. 20, Ch. 466, L. 1975; R.C.M. 1947, 38-1320; amd. Sec. 5, Ch. 579, L. 1991.**

Compiler's Comments

1991 Amendment: Inserted last sentence limiting use of physical restraint.

53-21-147. Right not to be subjected to experimental research. (1) Patients shall have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give such consent, and of his guardian, if any, and the friend of respondent appointed by the court after opportunities for consultation with independent specialists and with legal counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility, the department, or the research project shall be appointed prior to the involvement of the patient in any experimental research. At least 10 days prior to the commencement of such experimental research, the facility shall send notice of intent to involve the patient in experimental research to the patient, his next of kin, if known, his legal guardian, if any, the attorney who most recently represented him, and the friend of respondent appointed by the court.

(2) Such proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval, the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare for projects supported by that agency.

(3) A patient has the right to appropriate protection before participating in an experimental treatment, including the right to a reasonable explanation of the procedure to be followed, expected benefits, relative advantages, and the potential risks and discomforts of any experimental treatment. A patient has the right to revoke at any time consent to an experimental treatment.

History: **En. 38-1321 by Sec. 21, Ch. 466, L. 1975; R.C.M. 1947, 38-1321; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 6, Ch. 579, L. 1991.**

Compiler's Comments

1991 Amendment: Inserted (3) granting patient certain rights concerning experimental treatment.

53-21-148. Right not to be subjected to hazardous treatment. Patients have a right not to be subjected to treatment procedures such as lobotomy, adversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the friend of respondent appointed by the court, and any other interested party of the patient's choice. At least one of those consulted must consent to the treatment, along with the patient's counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility or with the department shall be appointed before any such treatment procedure can be employed. At least 10 days prior to the commencement of the extraordinary treatment program, the facility shall send notice of intent to employ extraordinary treatment procedures to the patient, his next of kin, if known, the legal guardian, if any, the attorney who most recently represented him, and the friend of respondent appointed by the court.

History: En. 38-1322 by Sec. 22, Ch. 466, L. 1975; amd. Sec. 12, Ch. 546, L. 1977; R.C.M. 1947, 38-1322; amd. Sec. 14, Ch. 547, L. 1979.

53-21-149 through 53-21-160 reserved.

53-21-161. Qualifications of professional persons. In every mental health facility to which a person is admitted pursuant to this part:

(1) each professional person and other staff member employed by the facility shall meet all certification requirements promulgated by the department;

(2) all nonprofessional staff members who have not had prior clinical experience in a mental institution shall have substantial orientation training;

(3) staff members on all levels shall have regularly scheduled in-service training;

(4) each nonprofessional staff member shall be under the direct supervision of a professional person.

History: En. 38-1323 by Sec. 23, Ch. 466, L. 1975; R.C.M. 1947, 38-1323.

Cross-References

Certification of professional persons, 53-21-106.

53-21-162. Establishment of patient treatment plan — patient's rights. (1) Each patient admitted as an inpatient to a mental health facility shall have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility.

(2) Each patient shall have an individualized treatment plan. This plan shall be developed by appropriate professional persons, including a psychiatrist, and shall be implemented no later than 10 days after the patient's admission. Each individualized treatment plan shall contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;

(f) criteria for release to less restrictive treatment conditions and criteria for discharge; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) As part of his treatment plan, each patient shall have an individualized after-care plan. This plan shall be developed by a professional person as soon as practicable after the patient's admission to the facility.

(4) In the interests of continuity of care, whenever possible one professional person (who need not have been involved with the development of the treatment plan) shall be responsible for supervising the implementation of the treatment plan, integrating the various aspects of the treatment program, and recording the patient's progress. This professional person shall also be responsible for ensuring that the patient is released, where appropriate, into a less restrictive form of treatment.

(5) The treatment plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. Moreover, at least every 90 days each patient shall receive a mental examination from and his treatment plan shall be reviewed by a professional person other than the professional person responsible for supervising the implementation of the plan.

(6) A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services; and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment:

(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) permitted under the applicable law in the case of a person committed to a facility by a court.

(7) In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection (6)(c), the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

(8) The department shall develop procedures for initiating limited guardianship proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent described in subsection (6)(c).

History: En. 38-1324 by Sec. 24, Ch. 466, L. 1975; amd. Sec. 13, Ch. 546, L. 1977; R.C.M. 1947, 38-1324; amd. Sec. 7, Ch. 579, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (6), (7), and (8) granting patient certain rights relative to treatment plan.

53-21-163. Examination following commitment. No later than 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility or his appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether he continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, he must be released immediately unless he agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact shall be reported immediately to the professional person in charge of the facility, the director of the department, the mental disabilities board of visitors, and the patient's counsel.

History: En. 38-1325 by Sec. 25, Ch. 466, L. 1975; amd. Sec. 14, Ch. 546, L. 1977; R.C.M. 1947, 38-1325.

53-21-164. Repealed. Sec. 15, Ch. 14, Sp. L. June 1986.

History: En. 38-1327 by Sec. 27, Ch. 466, L. 1975; R.C.M. 1947, 38-1327; amd. Sec. 13, Ch. 363, L. 1983.

53-21-165. Records to be maintained. Complete patient records shall be kept by the mental health facility for the length of time required by rules established by the department of health and environmental sciences. All records kept by the mental health facility shall be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records shall also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the

successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after-care plan and any modifications thereto and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary, on at least a weekly basis, by a professional person involved in the patient's treatment, of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information and initialed within 24 hours by a professional person; and

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the 30-day review provided for in 53-21-163.

History: En. 38-1328 by Sec. 28, Ch. 466, L. 1975; amd. Sec. 15, Ch. 546, L. 1977; R.C.M. 1947, 38-1328; amd. Sec. 12, Ch. 547, L. 1979; amd. Sec. 1, Ch. 333, L. 1987.

53-21-166. Records to be confidential — exceptions. All information obtained and records prepared in the course of providing any services under this part to individuals under any provision of this part shall be confidential and privileged matter and shall remain confidential and privileged after the individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

(1) in communications between qualified professionals in the provision of services or appropriate referrals;

(2) when the recipient of services designates persons to whom information or records may be released, provided that if a recipient of services is a ward and his guardian or conservator designates in writing persons to whom records or information may be disclosed, such designation shall be valid in lieu of the designation by the recipient; except that nothing in this section shall be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information which has been given to him in confidence by members of a patient's family;

(3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which he may be entitled;

(4) for research if the department has promulgated rules for the conduct of research; such rules shall include but not be limited to the requirement that all researchers must sign an oath of confidentiality;

(5) to the courts as necessary to the administration of justice;

(6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;

(7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in 53-21-104.

History: En. 38-1329 by Sec. 29, Ch. 466, L. 1975; R.C.M. 1947, 38-1329; amd. Sec. 28, Ch. 632, L. 1987; amd. Sec. 8, Ch. 579, L. 1991.

Compiler's Comments

1991 Amendment: Inserted language at end of first sentence maintaining confidentiality of information following discharge.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

Uniform Health Care Information Act, Title 50, ch. 16, part 5.

53-21-167. Patient labor. The following rules shall govern patient labor:

(1) No patient shall be required to perform labor which involves the operation and maintenance of a facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Patients may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(2) (a) Patients may be required to perform therapeutic tasks which do not involve the operation and maintenance of the facility, provided the specific task or any change in assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity.

(b) Patients may voluntarily engage in therapeutic labor for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor assignment is:

(i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment;

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity; and

(iii) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C., sec. 206, as amended.

(3) If any patient performs therapeutic labor which involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same

approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(4) Patients may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(5) Deductions or payments for care and other charges shall not deprive a patient of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

History: En. 38-1318 by Sec. 18, Ch. 466, L. 1975; R.C.M. 1947, 38-1318.

Cross-References

Prohibited acts, 53-1-303.

53-21-168. Statement of rights to be furnished and posted. Each patient shall promptly upon his admission receive in language he understands a written statement of all of his rights under this part, including the right to treatment, the right to the development of a treatment plan, the right to and the availability of legal counsel, and the rules for patient labor. In addition, a copy of the foregoing statement shall be posted in each ward.

History: En. 38-1331 by Sec. 31, Ch. 466, L. 1975; amd. Sec. 17, Ch. 546, L. 1977; R.C.M. 1947, 38-1331.

53-21-169. Protection and advocacy system — designation and authority. (1) A protection and advocacy system for individuals with a significant mental illness or emotional impairment is designated by the governor and may be administered in the state under the provisions of 42 U.S.C. 10801 through 10851. An eligible mental health protection and advocacy system under the provisions of 42 U.S.C. 10801 through 10851 must have as its primary goals:

(a) the protection and advocacy of the rights of mentally ill individuals who are defined in 42 U.S.C. 10802 as individuals with a significant mental illness or emotional impairment; and

(b) the investigation of incidents of abuse and neglect, as defined in 42 U.S.C. 10802, of mentally ill individuals.

(2) Pursuant to 42 U.S.C. 10801 through 10802, the protection and advocacy system may:

(a) investigate incidents of abuse and neglect of mentally ill individuals;

(b) pursue administrative, legal, and other appropriate remedies to ensure the protection of mentally ill individuals who are residents of the state and are receiving care or treatment in the state;

(c) have access to all mentally ill individuals and all facilities, wards, and living quarters as necessary to fulfill the goals described in subsection (1); and

(d) pursuant to 42 U.S.C. 10801 through 10851 and Title 50, chapter 16, part 5, have access to records, including:

(i) reports prepared by the staff of a mental health care and treatment facility;

(ii) reports prepared by an agency investigating reports of abuse, neglect, and injury occurring at a facility and that describe the incidents and the steps taken to investigate the reports; and

(iii) discharge planning records.

(3) All information obtained under this section must be kept confidential pursuant to 42 U.S.C. 10806.

(4) The protection and advocacy system described in this section is independent of any public or private agency that provides treatment or services to the mentally ill.

History: En. Sec. 1, Ch. 579, L. 1991.

53-21-170 through 53-21-180 reserved.

53-21-181. Discharge during or at end of initial commitment period — patient's right to referral. (1) At any time within the 3-month period provided for in 53-21-127(2), the patient may be discharged on the written order of the professional person in charge of him. In the event the patient is not discharged within the 3-month period and if the term is not extended as provided for in 53-21-128, he shall be discharged by the facility at the end of 3 months without further order of the court. Notice of the discharge shall be filed with the court and the county attorney at least 5 days prior to the discharge.

(2) Upon being discharged, each patient has a right to be referred, as appropriate, to other providers of mental health services.

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(2); amd. Sec. 9, Ch. 579, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) granting patient right of referral upon discharge.

53-21-182. Court-ordered release to alternative placement or treatment. At any time during the patient's commitment, the court may, on its own initiative or upon application of the professional person in charge of the patient, the patient, his next of kin, his attorney, or the friend of respondent appointed by the court, order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient therapy or other appropriate placement or treatment.

History: En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(5); amd. Sec. 14, Ch. 547, L. 1979.

53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, except as provided in 53-21-198, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, provided the

transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) Notice in writing to the court which committed the patient for treatment and the county attorney who initiated the action shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care.

(4) This section and 53-21-195 through 53-21-198 do not apply to a temporary release, certified as such by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days.

History: En. 38-1308 by Sec. 8, Ch. 466, L. 1975; amd. Sec. 8, Ch. 546, L. 1977; R.C.M. 1947, 38-1308; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 1, Ch. 541, L. 1985.

53-21-184. Patients for whom release and discharge provisions inapplicable. The release and discharge provisions of this part shall not apply to any patient held upon an order of court or judge in a proceeding arising out of a criminal act.

History: En. Sec. 1, Ch. 145, L. 1941; R.C.M. 1947, 38-501.

Cross-References

Mental competency of accused, Title 46, ch. 14.

53-21-185. Care and treatment following release. The department and its agents have an affirmative duty to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities include but are not limited to psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, a half-way house, outpatient treatment, and treatment in the psychiatric ward of a general hospital.

History: En. 38-1326 by Sec. 26, Ch. 466, L. 1975; R.C.M. 1947, 38-1326.

53-21-186. Support of patient conditionally released. When a mental health facility conditionally releases a patient committed to its care, it is not liable for his support while conditionally released. Liability devolves upon the legal guardian, parent, or person under whose care the patient is placed when conditionally released or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found are responsible for providing relief and care for a conditionally released patient who is unable to maintain himself or who is unable to secure support from the person under whose care he was placed on convalescent leave, like any other person in need of relief and care, under the public assistance laws.

History: En. Sec. 6, Ch. 145, L. 1941; amd. Sec. 1, Ch. 149, L. 1953; amd. Sec. 5, Ch. 152, L. 1957; amd. Sec. 32, Ch. 120, L. 1974; amd. Sec. 34, Ch. 466, L. 1975; amd. Sec. 3, Ch. 37, L. 1977; R.C.M. 1947, 38-506.

53-21-187. Clothing for patients discharged or conditionally released. A patient may not be discharged or conditionally released from a mental health facility without suitable clothing adapted to the season in which he is discharged.

History: En. Sec. 7, Ch. 145, L. 1941; amd. Sec. 6, Ch. 152, L. 1957; amd. Sec. 33, Ch. 120, L. 1974; amd. Sec. 35, Ch. 466, L. 1975; R.C.M. 1947, 38-507.

53-21-188. Maintenance of indigent patients on discharge. Prior to the discharge of a committed patient from a mental health facility, the professional person in charge of the facility shall notify the welfare department of the county from which the patient was committed. The county welfare department shall at once ascertain whether the discharged patient is in financial need. If the patient is found to be in financial need, the county welfare department shall properly care for and maintain the discharged patient under the laws of this state relating to public assistance until the patient is able to care for himself or until another provision has been made for care of the patient.

History: En. Sec. 2, Ch. 165; L. 1943; amd. Sec. 24, Ch. 266, L. 1963; amd. Sec. 7, Ch. 120, L. 1974; amd. Sec. 32, Ch. 466, L. 1975; amd. Sec. 1, Ch. 37, L. 1977; R.C.M. 1947, 38-110; amd. Sec. 13, Ch. 547, L. 1979.

Cross-References

General relief, Title 53, ch. 3.

53-21-189. Fact of evaluation or treatment not to be used for discrimination. No person who has received evaluation or treatment under any of the provisions of this part may be discriminated against because of that status. For purposes of this section, “discrimination” means giving any unfavorable weight to the fact of hospitalization or outpatient care and treatment unrelated to a person’s present capacity to meet standards applicable to all persons.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(part).

Cross-References

Freedom from discrimination, 49-1-102.

Illegal discrimination, Title 49, ch. 2.

53-21-190. Fact of evaluation or treatment not to be used in subsequent court proceeding — exception. The fact that a person has received evaluation and treatment, whether voluntarily or involuntarily, at a mental health facility may not be admitted into evidence in a subsequent proceeding for involuntary commitment or for the appointment of a guardian or conservator unless it is necessary to a determination of the present condition of the respondent or the prognosis for treatment in the present case and the judge determines that the need for the evidence outweighs the prejudicial effect of its admission.

History: En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(part).

Cross-References

Exclusion of relevant evidence on grounds of prejudice, Rule 403, M.R.Ev. (see Title 26, ch. 10).

53-21-191 through 53-21-194 reserved.

53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities — petition. (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each district court that committed the patient for the period of his present hospitalization under 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

(2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

(3) The petition must state:

(a) the patient's name and last-known address;

(b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent appointed by the court, if any and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to be seriously mentally ill within the meaning of this part and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

(d) a simple and precise statement of the facts showing that the patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a result of this deterioration the patient can no longer be appropriately served by outpatient care; and

(e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must be in conspicuous print and identified by a suitable heading.

(4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing must be held no more than 5 days after the date the petition is filed, including weekends and holidays, unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient. Further, the judge must ensure that the notice and copy of the petition are immediately hand-delivered to the patient, to his friend of respondent, if any, and to his counsel.

History: En. Sec. 2, Ch. 541, L. 1985.

53-21-196. Detention of conditionally released patient pending hearing. The court may not order detention of the conditionally released patient pending the hearing, except as permitted under 53-21-124.

History: En. Sec. 3, Ch. 541, L. 1985.

53-21-197. Hearing on rehospitalization petition — revocation of conditional release. (1) The court may order that the patient's conditional release status be revoked and that the patient be returned to the mental health facility from which he was conditionally released or sent to another appropriate inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

(a) the conditionally released patient has been determined by the district court to be seriously mentally ill and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128; and

(b) the conditionally released patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental condition, and that as a result of this deterioration the patient can no longer be appropriately served by outpatient care.

(2) A revocation of the patient's conditional release status under subsection (1) must be based on the testimony of the professional person responsible for the patient's case.

(3) If the court revokes the patient's conditional release status pursuant to subsection (1), a treatment plan must be updated or a new plan prepared for the patient as required by and within the time set forth in 53-21-162.

(4) Except as provided in 53-21-198, an order revoking the patient's conditional release status may not order hospitalization or impose other conditions of release that extend beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128.

History: En. Sec. 4, Ch. 541, L. 1985.

53-21-198. Extension of conditions of release — hearing. (1) Conditions of release may be extended by the district court beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear and convincing evidence that:

(a) continuation of the conditions of release is necessary to prevent the deterioration of the patient's mental disorder; and

(b) the deterioration will predictably result in the necessity of further inpatient care for the person. Predictability may be established by the patient's medical history.

(2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the professional person responsible for the patient's case may petition the court for extension of the conditions of release. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the friend of respondent appointed by the court, if any, and the patient's counsel. If any person so notified requests a hearing prior to the end of the period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the

professional person in charge of the patient. If a hearing is not requested, the court shall enter an order extending the conditions of release for a period not to exceed 6 months.

(4) Procedure on the petition for extension is the same in all respects as the procedure for hearing on a rehospitalization petition pursuant to 53-21-197 except that in an extension proceeding, the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceeding.

(5) If upon the hearing the court finds that the showing required by subsection (1) has not been made, the conditions of release may not be extended. If the court finds that the required showing has been made, the court may extend the conditions of release as recommended by the professional person. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient as required by 53-21-162. A court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(6) Further extensions may be obtained under the same procedure described in this section except that the patient's custody may not be affected for more than 1 year without a renewal of the extension under the procedures set forth in this section, including a hearing and a statement of the findings required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation provided in subsection (1).

History: En. Sec. 5, Ch. 541, L. 1985.

Part 2

Community Mental Health Centers

53-21-201. Definitions. As used in this part, the following definitions apply:

(1) "Community mental health center" means a facility, not necessarily encompassed within one building, that is licensed by the department of health and environmental sciences as a mental health center, as defined in 50-5-101, and that offers comprehensive mental health services that include at least the following services to the public:

(a) outpatient services, including specialized outpatient services for children, the elderly, individuals who have serious mental illness, and residents of its service area who have been discharged from inpatient treatment at a mental health facility;

(b) 24-hour-a-day emergency care services;

(c) day treatment or other partial hospitalization services or psychosocial rehabilitation services;

(d) screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission; and

(e) consultation and education in mental health.

(2) "Department" means the department of corrections and human services.

History: En. 80-2801 by Sec. 1, Ch. 509, L. 1975; R.C.M. 1947, 80-2801; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 312, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 312 deleted definition of public mental health facility that read: ""Public mental health facility" means any public service or group of services offering mental health care on an inpatient or outpatient basis to the mentally ill"; changed definition of community comprehensive mental health center to community mental health center, near beginning, after "building", substituted "that is licensed by the department of health and environmental sciences as a mental health center, as defined in 50-5-101, and that offers comprehensive mental health services that include" for "offering", after "following" deleted "six basic mental health", substituted present (a) through (d) regarding outpatient services, emergency care services, day treatment, and screening for former references to 24-hour inpatient care, part-time hospitalization, outpatient service, and emergency service, and deleted (f) requiring precare and aftercare; and deleted definition of mental health clinic that read: ""Mental health clinic" means an outpatient facility offering mental health care to the public". Amendment effective July 1, 1991.

53-21-202. Duties of department. The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. Such means shall be utilized to initiate and operate these services in cooperation with local agencies as established under this part.

(3) collect and disseminate information relating to mental health;

(4) prepare and maintain a comprehensive plan for the development of public mental health services in the state;

(5) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(6) establish standards for mental health programs that receive funds from the department; and

(7) evaluate performance of programs that receive funds from the department in compliance with federal and state standards.

History: En. 80-2802 by Sec. 2, Ch. 509, L. 1975; amd. Sec. 52, Ch. 37, L. 1977; R.C.M. 1947, 80-2802; amd. Sec. 19, Ch. 361, L. 1983; amd. Sec. 2, Ch. 312, L. 1991.

Compiler's Comments

1991 Amendment: In (2), at beginning after "initiate", deleted "preventive mental health activities of the statewide mental health programs, including but not limited to the implementation of"; deleted former (3) that read: "(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill"; in (4) deleted former second sentence that read: "The public mental health services shall include but not be limited to community comprehensive mental health centers, mental health clinics, traveling service units, and consultative and educational services"; deleted former (6) that read: "(6) provide by regulations for the examination of persons who apply for examination or who are admitted either as inpatients or outpatients to the Montana state hospital or other public mental health facilities"; in (6) substituted reference to mental health programs that receive funds from the Department for reference to public mental health facilities; in (7) substituted reference to programs that receive funds from the Department for reference to public mental health facilities; and made minor changes in style. Amendment effective July 1, 1991.

53-21-203. Departmental contracts with mental health corporations. The department may enter into contracts with regional mental health corporations for the purposes of the prevention, diagnosis, and treatment of mental illness. Under rules adopted by the department, mental health corporations may be provided for directly by state agencies or indirectly through contract or cooperative arrangements with other agencies of government, regional or local, private or public agencies, private professional persons, or hospitals.

History: En. 80-2803 by Sec. 3, Ch. 509, L. 1975; R.C.M. 1947, 80-2803; amd. Sec. 20, Ch. 361, L. 1983; amd. Sec. 1, Ch. 124, L. 1985.

Cross-References

Public contracts generally, Title 18, ch. 1.

53-21-204. Mental health corporations. (1) Mental health regions shall be established in the state mental health plan and shall conform to the mental health regions as established in the state mental health construction plan promulgated by the board of health and environmental sciences under the federal Community Mental Health Centers Act.

(2) The mental health regions shall establish themselves under Title 35, chapter 2. Upon incorporation, a mental health region may enter into contracts with the department in order to carry out the department's comprehensive plan for mental health. These nonprofit corporations shall not be considered agencies of the department or the state of Montana; however, they may retain and enter into retirement programs as established under Title 19, chapter 3, The Public Employees' Retirement System Act.

(3) Upon the establishment of the mental health regions, the county commissioners in each of the counties in the region designated as participating counties pursuant to subsection (8) shall appoint a person from their respective county to serve as a representative of the county on the regional mental health corporation board. In addition, unless the groups in subsections (3)(a) and (3)(b) are already represented, the board must include three members-at-large who must be chosen according to the corporate bylaws, as follows:

(a) Two members must be chosen, one from each of the following groups:

(i) persons with severe and disabling mental illnesses; and

(ii) family members of persons with severe and disabling mental illnesses.

(b) One person must be chosen from among the following three groups:

(i) parents of children with emotional disturbances;

(ii) advocates of mental health services for the elderly; or

(iii) health care professionals.

(4) Nothing in this section prohibits a regional mental health corporation from voluntarily expanding its board membership to include members-at-large, appointed by the board, from any of the groups described in subsections (3)(a) and (3)(b).

(5) The board shall be established under guidelines adopted by the bylaws of the corporation. All appointments to the board shall be for terms of 2 years, and the department shall be notified in writing of all appointments.

(6) The duties of an organized regional mental health corporation board include:

(a) annual review and evaluation of mental health needs and services within the region;

(b) preparation and submission to the department and to each of the counties in the region of plans and budget proposals to provide and support mental health services within the region;

(c) establishment of a recommended proportionate level of financial participation of each of the counties within the region in the provision of mental health services within the limits of this section;

(d) receipt and administration of moneys and other support made available for the purposes of providing mental health services by the participating agencies, including grants from the United States government and other agencies, receipts for established fees for services rendered, tax moneys, gifts, donations, and any other type of support or income. All funds received by the board in accordance with this part shall be used to carry out the purposes of this part.

(e) supervision of appropriate administrative staff personnel of the operation of community mental health services within the region;

(f) keeping all records of the board and making reports required by the department.

(7) Regional mental health board members shall be reimbursed from funds of the board for actual and necessary expenses incurred in attending meetings and in the discharge of board duties when assigned by the board.

(8) Prior to June 10 of each year, the board of mental health shall submit to the board of county commissioners of each of the counties within the constituted mental health region an annual budget, specifying each county's recommended proportionate share. If the board of county commissioners includes in the county budget the county's proportionate share of the regional board's budget, it shall be designated as a participating county. Funds for each participating county's proportionate share for the operation of mental health services within the region shall be derived from the county's general fund. If the general fund is insufficient to meet the approved budget, a levy not to exceed 1 mill may be made on the taxable valuation of the county in addition to all other taxes allowed by law to be levied on such property.

(9) The regional board of mental health with the approval of the department shall establish a schedule of fees for mental health services. The fees may be received by the board and used to implement the budget in accordance with subsection (6)(d).

History: En. 20-2804 by Sec. 4, Ch. 509, L. 1975; R.C.M. 1947, 80-2804; amd. Sec. 1, Ch. 29, L. 1987; amd. Sec. 1, Ch. 806, L. 1991.

Compiler's Comments

1991 Amendment: In (3), in first sentence, substituted "counties in the region designated as participating counties pursuant to subsection (8)" for "participating counties in the region as defined in subsection (5)" and after "shall" substituted "appoint" for "designate" and inserted second sentence requiring Board, unless groups already represented, to include three members-at-large chosen according to bylaws and describing groups from which members must be appointed; inserted (4) providing that section does not prohibit regional mental health corporation from voluntarily expanding Board to include members-at-large from groups described; and in (9) substituted "subsection (6)(d)" for "53-21-204(3)(d)". Amendment effective July 1, 1991.

Cross-References

Bills, Art. V, sec. 11, Mont. Const.

53-21-205. Continuation of services. Nothing in this part shall be construed to prevent the continuation of existing mental health services or facilities.

History: En. 80-2805 by Sec. 5, Ch. 509, L. 1975; R.C.M. 1947, 80-2805.

53-21-206. Availability of services. The services of the department and of the incorporated regional mental health centers are available without discrimination on the basis of race, color, creed, religion, or ability to pay and shall comply with Title VI of the Civil Rights Act of 1964.

History: En. 80-2806 by Sec. 6, Ch. 509, L. 1975; amd. Sec. 17, Ch. 38, L. 1977; R.C.M. 1947, 80-2806.

Cross-References

Individual dignity, Art. II, sec. 4, Mont. Const.

Illegal discrimination, Title 49, ch. 2.

53-21-207 through 53-21-210 reserved.

53-21-211. Purpose. The purpose of 53-21-211 through 53-21-214 is to:

(1) eliminate unnecessary duplication and overlapping of review and inspection of community mental health centers by multiple state agencies;

(2) improve the efficiency and minimize the cost of necessary state review and announced inspection of community mental health centers; and

(3) reduce the inconvenience and cost to community mental health centers of review and inspection by separate state agencies.

History: En. Sec. 1, Ch. 619, L. 1989.

53-21-212. Definitions. As used in 53-21-211 through 53-21-214, the term "state agency" means:

(1) the department of health and environmental sciences provided for in 2-15-2101;

(2) the department of social and rehabilitation services provided for in 2-15-2201;

(3) the department of corrections and human services provided for in 2-15-2301; and

(4) the mental disabilities board of visitors provided for in 2-15-211.

History: En. Sec. 2, Ch. 619, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 312, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana

Code Annotated. Amendment effective July 1, 1991.

Chapter 312 near beginning, after "53-21-214", deleted clause concerning applicability of definitions; deleted definition of community mental health center that read: ""Community mental health center" means a community comprehensive mental health center as defined in 53-21-201"; and made minor changes in style. Amendment effective July 1, 1991.

53-21-213. Joint review and inspection. Each state agency shall, if possible and practical, participate in joint review and inspection of community mental health centers. All joint announced on-site review and inspection activities of state agencies must be coordinated by function so that similar review and inspection activities of each state agency are conducted at one time.

History: En. Sec. 3, Ch. 619, L. 1989.

53-21-214. Authorization for employees to perform functions of other state agency. Each state agency may enter into an interagency agreement with other state agencies to authorize its employees to conduct specific review and inspection of community mental health centers under the jurisdiction of another state agency. Prior to authorizing employees of another state agency to conduct review and inspection under its jurisdiction, each state agency may require minimum standards of knowledge and training relevant to the type of activity to be conducted.

History: En. Sec. 4, Ch. 619, L. 1989.

Part 3

Warm Springs State Hospital
(Repealed. Sec. 26, Ch. 361, L. 1983)

Part Compiler's Comments

Histories of Repealed Sections:

53-21-301. En. Sec. 67, Ch. 199, L. 1965; amd. Sec. 31, Ch. 320, L. 1967; amd. Sec. 3, Ch. 90, L. 1974; amd. Sec. 60, Ch. 120, L. 1974; R.C.M. 1947, 80-2401.

53-21-302. En. Sec. 68, Ch. 199, L. 1965; amd. Sec. 32, Ch. 320, L. 1967; amd. Sec. 62, Ch. 120, L. 1974; amd. Sec. 1, Ch. 338, L. 1974; amd. Sec. 1, Ch. 428, L. 1975; R.C.M. 1947, 80-2402.

Part 4

Community-Based Nursing Homes
Center for the Aged

53-21-401. Legislative intent. (1) It is the intent of the legislature that geriatric patients at the Montana state hospital and geriatric residents of the state who may in the future be placed at the Montana state hospital and who do not need intensive psychiatric care receive care and treatment in nursing homes located in community settings.

(2) It is the further intent of the legislature that nursing homes providing such care and treatment be located regionally so that the residents may be near their homes and families.

(3) It is the further intent of the legislature that these nursing homes shall be located in communities with:

(a) a labor pool large enough to ensure adequate and qualified staffing;

(b) sufficient medical facilities and medical professionals to provide necessary medical services; and

(c) if possible, an institution or institutions of higher learning with educational programs in disciplines with relevance to the problems of aging.

History: En. 80-2413 by Sec. 1, Ch. 523, L. 1975; R.C.M. 1947, 80-2413; amd. Sec. 21, Ch. 361, L. 1983.

53-21-402. Powers and duties of department of corrections and human services. The department of corrections and human services:

(1) shall contract with nonprofit corporations which demonstrate expertise in and the capability of providing rehabilitative and restorative programs for aged citizens for the operation and management of nursing homes established under this part;

(2) shall ensure that nursing homes established and operated under this part are in compliance with all applicable federal and state regulations;

(3) shall adopt rules for staffing requirements and the admission of patients;

(4) shall provide that geriatric residents of the Montana state hospital have first priority for admission to nursing homes established under this part;

(5) may accept grants, gifts, bequests, and contributions in money or property or any other form from individuals, corporations, associations, or federal, state, and local government agencies for the purposes of establishing and operating nursing homes under this part.

History: En. 80-2414 by Sec. 4, Ch. 523, L. 1975; R.C.M. 1947, 80-2414; amd. Sec. 22, Ch. 361, L. 1983; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

One-step licensing — inspection by other department, Title 50, ch. 8.

53-21-403 through 53-21-410 reserved.

53-21-411. Location and function of center for the aged. (1) The institution located at Lewistown is the Montana center for the aged. The primary function of the center is the care and treatment of persons 55 years of age or older. Priority must be given to patients referred from the Montana state hospital.

(2) Appropriate admissions to the Montana center for the aged are persons unable to maintain themselves in their homes or communities due to a mental disorder, as defined in 53-21-102, associated with the aging process, but who do not require the intensity of treatment available at the Montana state hospital.

(3) Admissions to the center are voluntary. The department of corrections and human services may adopt rules concerning specific admission criteria, treatment, and discharge procedures.

History: En. Sec. 71, Ch. 199, L. 1965; amd. Sec. 70, Ch. 120, L. 1974; amd. Sec. 36, Ch. 466, L. 1975; R.C.M. 1947, 80-2501; amd. Sec. 1, Ch. 231, L. 1983; (2)En. Sec. 3, Ch. 231, L. 1983; amd. Secs. 23, 27, Ch. 361, L. 1983; amd. Sec. 1, Ch. 243, L. 1985; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-21-412. Transfer of patients between Montana state hospital and center. (1) With the approval of the department of corrections and human services, Montana state hospital patients may be admitted to the center upon voluntary application by the patient or the patient's guardian.

(2) A patient of the center may be voluntarily admitted to Montana state hospital pursuant to 53-21-111 or involuntarily committed pursuant to 53-21-114 through 53-21-127.

History: En. Sec. 72, Ch. 199, L. 1965; amd. Sec. 71, Ch. 120, L. 1974; R.C.M. 1947, 80-2502; amd. Sec. 24, Ch. 361, L. 1983; amd. Sec. 2, Ch. 243, L. 1985; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-21-413. Discharge of patients. The superintendent of the center may authorize the discharge of a patient residing at the center according to rules adopted by the department of corrections and human services. However, no patient may be detained at the center without the consent of the patient or his guardian.

History: En. Sec. 73, Ch. 199, L. 1965; R.C.M. 1947, 80-2503; amd. Sec. 2, Ch. 231, L. 1983; amd. Sec. 3, Ch. 243, L. 1985; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Adoption and publication of rules, Title 2, ch. 4, part 3.

Part 5

Youth Treatment

Part Cross-References
Mentally ill — Montana State Hospital, 53-21-601.

53-21-501. Repealed. Sec. 15, Ch. 14, Sp. L. June 1986.
History: En. Sec. 1, Ch. 363, L. 1983; amd. Sec. 2, Ch. 612, L. 1985.

53-21-502. Repealed. Sec. 15, Ch. 14, Sp. L. June 1986.
History: En. Sec. 5, Ch. 363, L. 1983.

53-21-503 and 53-21-504 reserved.

53-21-505. Repealed. Sec. 15, Ch. 14, Sp. L. June 1986.
History: En. Sec. 2, Ch. 363, L. 1983; amd. Sec. 3, Ch. 612, L. 1985.

53-21-506. No commitment to Montana state hospital. An individual less than 18 years of age may not be voluntarily admitted or committed by a court to the Montana state hospital unless such individual is transferred to district court pursuant to 41-5-206.
History: En. Sec. 3, Ch. 363, L. 1983; amd. Sec. 27, Ch. 361, L. 1983; amd. Sec. 4, Ch. 612, L. 1985; amd. Sec. 1, Ch. 549, L. 1987.

53-21-507. Repealed. Sec. 5, Ch. 612, L. 1985.
History: En. Sec. 4, Ch. 363, L. 1983.

Part 6

Montana State Hospital

53-21-601. Location and primary function of hospital. (1) The agency providing comprehensive health care services at Galen and Warm Springs, Montana, is the Montana state hospital and as its primary function provides:

(a) care and treatment of mentally ill persons;

(b) diagnosis, care, evaluation, treatment, referral, and rehabilitation of persons afflicted with chemical dependency;

(c) care and treatment of institutional residents or clients of the department's community and residential programs who require acute hospital care or nursing care;

(d) treatment of tuberculosis and silicosis (commonly called miner's consumption);

(e) detoxification of those persons who seek relief from the disabling effects of alcohol and other chemical substances; and

(f) contingent upon space and funds, the treatment of pulmonary diseases and other medical or organic disorders.

(2) The campus facility at Warm Springs, Montana, is the component designated as the mental health facility, as defined in 53-21-102, of the department of corrections and human services for the care and treatment of mentally ill persons.

(3) The designated campus facilities at Galen, Montana, are the components designated as the department's residential treatment facilities for those persons suffering from chemical dependency.

(4) The campus facility at Galen, Montana, licensed to provide acute hospital and intermediate nursing care, is the facility component designated for the care and treatment of the medical and organic disorders described in this section.

History: En. Sec. 17, Ch. 199, L. 1965; amd. Sec. 5, Ch. 320, L. 1967; amd. Sec. 1, Ch. 90, L. 1974; R.C.M. 1947, 80-1701; amd. Sec. 13, Ch. 361, L. 1983; Sec. 53-6-301, MCA 1989; redes. 53-21-601 by Code Commissioner, 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-21-602. Transfer of patients from Galen to mental institution. A mentally retarded or mentally ill person residing at the Galen campus facility of the Montana state hospital may be transferred to the Warm Springs campus facility of the Montana state hospital, the Montana center for the aged, or the Montana developmental center with the approval of the department of corrections and human services if the department determines that the transfer will be in the best interests of the patient. Unless a medical or psychiatric emergency exists, 15 days prior to the transfer the department shall send notice of the proposed transfer to the patient's parent, guardian, or spouse or, if none is known, his nearest relative or friend. In the case of an emergency transfer, the department shall send notice within 72 hours after the time of transfer.

History: En. Sec. 19, Ch. 199, L. 1965; amd. Sec. 7, Ch. 320, L. 1967; R.C.M. 1947, 80-1703; amd. Sec. 15, Ch. 361, L. 1983; amd. Sec. 4, Ch. 151, L. 1985; Sec. 53-6-303, MCA 1989; redes. 53-21-602 by Code Commissioner, 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Treatment of the seriously mentally ill, Title 53, ch. 21, part 1.

53-21-603. Alcoholic treatment center. (1) There is an alcoholic treatment center located at the Montana state hospital. The admittance and discharge procedures for alcoholics are the same as for ill persons.

(2) As used in this section:

(a) "alcoholism" means a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to an extent which endangers the drinker's health, interpersonal relations, or economic functioning or to an extent which endangers the public health, welfare, or safety;

(b) an "alcoholic" is a person suffering from the illness of alcoholism.

(3) The alcoholic treatment center shall provide care, evaluation, treatment, referral, and rehabilitation to persons in Montana who are referred for the treatment of the illness of alcoholism or the complications thereof.

History: En. Sec. 70, Ch. 199, L. 1965; amd. Sec. 33, Ch. 320, L. 1967; Sec. 80-2404, R.C.M. 1947; amd. and redes. 80-1705 by Sec. 2, Ch. 90, L. 1974; R.C.M. 1947, 80-1705; amd. Sec. 1, Ch. 284, L. 1981; amd. Sec. 16, Ch. 361, L. 1983; Sec. 53-6-304, MCA 1989; redes. 53-21-603 by Code Commissioner, 1991.

Cross-References

Alcoholism and drug dependence, Title 53, ch. 24.

CHAPTER 22

INTERSTATE COMPACT ON MENTAL HEALTH

Part 1 — General Provisions

53-22-101. Enactment of compact.
53-22-102. Compact administrator.
53-22-103. Supplementary agreements.
53-22-104. Annual budget.
53-22-105. Court review.
53-22-106. Authenticated copies.

Part 1

General Provisions

Part Cross-References

Transfer to nonstate facilities, 53-21-133.

53-22-101. Enactment of compact. The Interstate Compact on Mental Health as contained herein is hereby enacted into law and entered into by this state with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

(1) "sending state" means a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent;

(2) "receiving state" means a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent;

(3) "institution" means any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency;

(4) "patient" means any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact;

(5) "aftercare" means care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release;

(6) "mental illness" means mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, the welfare of others, or of the community;

(7) "mental deficiency" means mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs but shall not include mental illness as defined herein; and

(8) "state" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(1) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(2) The provisions of subsection (1) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another

state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this subsection shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(3) No state shall be obliged to receive any patient pursuant to the provisions of subsection (2) of this article unless the sending state gives advance notice of its intention to send the patient, furnishes all available medical and other pertinent records concerning the patient, gives the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state agrees to accept the patient.

(4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(1) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(2) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards

of visitation, examination, care, and treatment that it employs for similar local patients.

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact without interference.

Article VII

(1) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(3) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, and officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

(4) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(5) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient or any statutory authority pursuant to which such agreements may be made.

Article VIII

(1) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall, upon being duly advised of the new appointment and

upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances. In the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in subsection (1) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(1) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail, or lockup, but such patient shall with all expedition be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(1) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of a sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(2) The compact administrators of the respective party states shall have power to promulgate reasonable rules to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(1) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect 1 year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(2) Withdrawal from any agreement permitted by Article VII(2) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412(part).

53-22-102. Compact administrator. The director of the department of corrections and human services, hereafter called "the director", shall be the compact administrator and shall have the power to make any rules necessary for the administration of the compact. The director shall cooperate with all departments, agencies, and officers of the state and any political subdivision thereof to facilitate the proper administration of the Interstate Compact on Mental Health or of any supplementary agreement or agreements entered into thereunder by this state.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(2)); amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-22-103. Supplementary agreements. The director may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(3)).

53-22-104. Annual budget. The department of corrections and human services in its annual budget shall include such amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the Interstate Compact on Mental Health, and the legislature shall appropriate such sums necessary therefor.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(4)); **amd. Sec. 1, Ch. 262, L. 1991.**

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-22-105. Court review. The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to make no transfer out of the state without approval of the district or probate court. Before granting such approval, the court shall hold such hearings as it considers appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and his guardian ad litem. The person serving such notices shall make a written return to the court that such has been done. At the conclusion of such hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(5)).

53-22-106. Authenticated copies. Duly authenticated copies of the compact shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States and the Council of State Governments.

History: En. Sec. 1, Ch. 112, L. 1971; amd. Sec. 48, Ch. 37, L. 1977; R.C.M. 1947, 80-2412 (Art. XIV(6)).

CHAPTER 23

EUGENICAL STERILIZATION
(Repealed. Sec. 1, Ch. 286, L. 1981)

Chapter Compiler's Comments

Histories of Repealed Sections: **53-23-101 and 53-23-102.** En. Sec. 1, Ch. 332, L. 1969; R.C.M. 1947, 69-6401.

53-23-103 through 53-23-105. En. Secs. 3, 4, 6, Ch. 332, L. 1969; amd. Secs. 34, 35, 37, Ch. 120, L. 1974; R.C.M. 1947, 69-6403, 69-6404, 69-6406.

CHAPTER 24

ALCOHOLISM AND DRUG DEPENDENCE

Part 1 — General Provisions

53-24-101. Legislative purpose.
53-24-102. Declaration of policy.
53-24-103. Definitions.
53-24-104. Deposit of funds from federal or private sources with state treasurer.
53-24-105. Application of administrative procedure act.
53-24-106. Criminal laws limitation.
53-24-107. Public intoxication not a criminal offense.
53-24-108. Utilization of funds generated by taxation on alcoholic beverages.

Part 2 — Administration by Department of Corrections and Human Services

53-24-201. Department to administer chapter.
53-24-202. State and local government to cooperate with department.
53-24-203. Repealed.
53-24-204. Powers and duties of department.
53-24-205. Repealed.
53-24-206. Administration of financial assistance.
53-24-207. Comprehensive program for treatment.
53-24-208. Facility standards.
53-24-209. Rules for acceptance for treatment.
53-24-210. Departmental reports to legislature.
53-24-211. County plan to be submitted to department.
53-24-212 through 53-24-214 reserved.
53-24-215. Certification of chemical dependency counselors.
53-24-216. Suspension or revocation of certification.
53-24-217. Procedure for charging violation of professional ethics standards.

Part 3 — Treatment of Alcoholics and Intoxicated Persons

53-24-301. Voluntary treatment of alcoholics.
53-24-302. Involuntary commitment of alcoholics.
53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol.
53-24-304. Emergency commitment of intoxicated persons and persons incapacitated by alcohol.
53-24-305. Visitation and communication rights of patients.
53-24-306. Records of chemically dependent persons, intoxicated persons, and family members.

Part 1

General Provisions

53-24-101. Legislative purpose. It is the purpose of this chapter and the policy of this state to recognize chemical dependency as a problem affecting the health, safety, morals, economy, and general welfare of this state; to recognize chemical dependency as a problem subject to treatment; and to recognize the sufferer of chemical dependency as worthy of treatment and rehabilitation. It is the intent of this chapter to establish means whereby the appropriate resources of this state may be focused fully and effectively upon the problem of chemical dependency and utilized in implementing programs for the control and treatment of this problem.

History: En. Sec. 1, Ch. 303, L. 1969; Sec. 69-6201, R.C.M. 1947; redes. 80-2701 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 49, Ch. 37, L. 1977; R.C.M. 1947, 80-2701; amd. Sec. 1, Ch. 406, L. 1983.

53-24-102. Declaration of policy. It is the policy of the state of Montana to recognize alcoholism as an illness and that alcoholics and intoxicated persons may not be subjected to criminal prosecution because of their consumption of alcoholic beverages but rather should be afforded a continuum of treatment in order that they may lead normal lives as productive members of society.

History: En. 69-6211 by Sec. 1, Ch. 302, L. 1974; Sec. 69-6211, R.C.M. 1947; redes. 80-2708 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2708.

Cross-References

Criminal responsibility of person in intoxicated condition, 45-2-203.

Unlawful possession of intoxicating substance, 45-5-624.

53-24-103. Definitions. For purposes of this chapter, the following definitions apply:

(1) "Alcoholic" means a person who has a chronic illness or disorder of behavior characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal relationships, or economic function of the individual or public health, welfare, or safety.

(2) "Approved private treatment facility" means a private agency (whose function is the treatment, rehabilitation, and prevention of chemical dependency) and meeting the standards prescribed in 53-24-208(1) and approved under 53-24-208.

(3) "Approved public treatment facility" means:

(a) a treatment agency operating under the direction and control of the department as a state agency and approved under 53-24-208; or

(b) a treatment agency operating under the direction and control of a local government and approved under 53-24-208.

(4) "Chemical dependency" means the use of any chemical substance, legal or illegal, which creates behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug dependency,

or both, that endanger the health, interpersonal relationships, or economic functions of an individual or the public health, welfare, or safety.

(5) "Department" means the department of corrections and human services provided for in 2-15-2301.

(6) "Family member" is the spouse, mother, father, child, or member of the household of a chemically dependent person whose life has been affected by the actions of the chemically dependent person and who may require treatment.

(7) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment.

(8) "Incompetent person" means a person who has been adjudged incompetent by the district court.

(9) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol.

(10) "Prevention" has meaning on four levels; these are:

(a) education to provide information to the school children and general public relating to chemical dependency treatment and rehabilitative services and to reduce the consequences of life experiences acquired by contact with a chemically dependent person;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services.

(11) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, which may be extended to chemically dependent persons, intoxicated persons, and family members.

History: En. 69-6212 by Sec. 2, Ch. 302, L. 1974; Sec. 69-6212, R.C.M. 1947; amd. and redes. 80-2709 by Sec. 2, Ch. 280, L. 1975; amd. Sec. 1, Ch. 414, L. 1977; R.C.M. 1947, 80-2709; amd. Sec. 1, Ch. 711, L. 1979; amd. Sec. 2, Ch. 406, L. 1983; amd. Sec. 1, Ch. 513, L. 1983; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-24-104. Deposit of funds from federal or private sources with state treasurer. Funds available to the department from federal or private sources for use in chemical dependency prevention, treatment, and control programs shall be deposited with the state treasurer to the account of the department in the federal special revenue fund or the state special revenue fund.

History: **En. Sec. 7, Ch. 303, L. 1969; Sec. 69-6207, R.C.M. 1947; redes. 80-2707 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2707; amd. Sec. 15, Ch. 38, L. 1979; amd. Sec. 2, Ch. 277, L. 1983; amd. Sec. 3, Ch. 406, L. 1983; amd. Sec. 5, Ch. 700, L. 1989.**

53-24-105. Application of administrative procedure act. The Montana Administrative Procedure Act applies to and governs all administrative actions taken under this chapter.

History: **En. 69-6224 by Sec. 14, Ch. 302, L. 1974; Sec. 69-6224, R.C.M. 1947; redes. 80-2721 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2721.**

Cross-References

Montana Administrative Procedure Act, Title 2, ch. 4.

53-24-106. Criminal laws limitation. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being a common drunkard, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) Nothing in this section affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol, or other similar offense involving the operation of a vehicle, an aircraft, a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages at stated times and places or by a particular class of persons.

History: **En. 80-2723 by Sec. 2, Ch. 403, L. 1975; R.C.M. 1947, 80-2723.**

Cross-References

Driving under influence of alcohol or drugs, Title 61, ch. 8, part 4.

Intoxicated pedestrian, 61-8-508.

53-24-107. Public intoxication not a criminal offense. (1) A person who appears to be intoxicated or incapacitated by alcohol in public commits no criminal offense solely by reason of being in such condition but may be detained by a peace officer for the person's own protection. A peace officer who detains a person who appears to be intoxicated or incapacitated by alcohol in public shall proceed in the manner as provided by 53-24-303.

(2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person who appears to be intoxicated or incapacitated by alcohol in jail until the person is no longer creating a risk to himself or others.

(3) A peace officer, acting within the scope of his authority under this chapter, shall not be personally liable for his actions.

History: **En. 80-2724 by Sec. 3, Ch. 403, L. 1975; R.C.M. 1947, 80-2724.**

53-24-108. Utilization of funds generated by taxation on alcoholic beverages. (1) Revenue generated by 16-1-404, 16-1-406, 16-1-408, and 16-1-411 to state-approved private nonprofit or public programs whose function is the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved private nonprofit or public alcoholism programs and licensed hospitals for detoxification services; or

(b) as grants to state-approved private nonprofit or public alcoholism programs.

(2) State-approved private chemical programs organized for profit are not eligible for revenue generated by 16-1-404, 16-1-406, 16-1-408, and 16-1-411.

(3) No person operating a state-approved alcoholism program may be required to provide matching funds as a condition of receiving a grant under subsection (1) of this section.

(4) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(5) No person receiving funding under this section to support operation of a state-approved alcoholism program may refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(6) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income, including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess shall be reported to the grantor.

(c) The excess shall be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) to allow program growth through the expansion of services or for capital expenditures necessary to improve facilities where services are provided.

(7) Revenue generated by 16-1-404, 16-1-406, 16-1-408, and 16-1-411 for the treatment, rehabilitation, and prevention of alcoholism which has not been encumbered for those purposes by the counties of Montana or the department shall be returned to the state special revenue fund for the treatment, rehabilitation, and prevention of alcoholism within 30 days after the close of each fiscal year and will be distributed by the department the following year as provided in 53-24-206(3)(b).

History: En. 80-2725 by Sec. 7, Ch. 414, L. 1977; R.C.M. 1947, 80-2725; amd. Sec. 16, Ch. 38, L. 1979; amd. Sec. 2, Ch. 711, L. 1979; amd. Sec. 1, Ch. 183, L. 1981; amd. Sec. 1, Ch. 277, L. 1983; amd. Sec. 2, Ch. 513, L. 1983; amd. Sec. 1, Ch. 402, L. 1987.

Part 2

Administration by Department of Corrections and Human Services

53-24-201. Department to administer chapter. The department shall administer the provisions of this chapter.

History: En. Sec. 5, Ch. 303, L. 1969; Sec. 69-6205, R.C.M. 1947; redes. 80-2705 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2705.

53-24-202. State and local government to cooperate with department. All agencies of state government, local government, and all state and local government employees shall, upon request, cooperate with the department in its activities under this chapter, but nothing in the chapter shall be construed to give the department control over any state or local agency or employee unless otherwise provided by law.

History: En. Sec. 6, Ch. 303, L. 1969; Sec. 69-6206, R.C.M. 1947; redes. 80-2706 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2706.

53-24-203. Repealed. Sec. 9, Ch. 711, L. 1979.

History: (1) thru (5)En. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974; Sec. 69-6203, R.C.M. 1947; amd. and redes. 80-2702 by Sec. 1, Ch. 280, L. 1975; amd. Sec. 50, Ch. 37, L. 1977; Sec. 80-2702, R.C.M. 1947; (6) thru (22)En. 69-6214 by Sec. 4, Ch. 302, L. 1974; Sec. 69-6214, R.C.M. 1947; redes. 80-2711 by Sec. 6, Ch. 280, L. 1975; Sec. 80-2711, R.C.M. 1947; R.C.M. 1947, 80-2702(1), 80-2711.

53-24-204. Powers and duties of department. (1) To carry out this chapter, the department may:

(a) accept gifts, grants, and donations of money and property from public and private sources;

(b) enter into contracts;

(c) acquire and dispose of property.

(2) The department shall:

(a) approve treatment facilities as provided for in 53-24-208;

(b) prepare a comprehensive long-term state chemical dependency plan every 4 years and update this plan each biennium. These updates or any part thereof may be included in the department's report to the legislature required in 53-24-210.

(c) provide for and conduct statewide service system evaluations;

(d) distribute state and federal funds to the counties for approved treatment programs in accordance with the provisions of 53-24-206;

(e) plan in conjunction with approved programs and provide for training of program personnel delivering services to chemically dependent persons;

(f) establish criteria to be used for the development of new programs;

(g) certify and establish standards for the certification of:

(i) chemical dependency counselors; and

(ii) instructors providing chemical dependency educational courses;

(h) encourage planning for the greatest utilization of funds by discouraging duplication of services, encouraging efficiency of services through existing programs, and encouraging rural counties to form multicounty districts or contract with urban programs for services;

(i) cooperate with the board of pardons in establishing and conducting programs to provide treatment for chemically dependent and intoxicated persons in or on parole from penal institutions;

(j) establish standards for chemical dependency educational courses provided by state-approved treatment programs and approve or disapprove the courses; and

(k) assist all interested public agencies and private organizations in developing education and prevention programs for chemical dependency.

History: Ap.p. Sec. 3, Ch. 303, L. 1969; amd. Sec. 94, Ch. 349, L. 1974; R.C.M. 1947, 69-6203; amd. and redes. 80-2702 by Sec. 1, Ch. 280, L. 1975; amd. Sec. 50, Ch. 37, L. 1977; Sec. 80-2702, R.C.M. 1947; Ap.p. Sec. 3, Ch. 302, L. 1974; Sec. 69-6213, R.C.M. 1947; redes. 80-2710 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 2, Ch. 414, L. 1977; Sec. 80-2710, R.C.M. 1947; R.C.M. 1947, 80-2702(2), 80-2710; amd. Sec. 3, Ch. 711, L. 1979; amd. Sec. 176, Ch. 575, L. 1981; amd. Sec. 1, Ch. 365, L. 1983; amd. Sec. 4, Ch. 406, L. 1983; amd. Sec. 1, Ch. 126, L. 1985; amd. Sec. 42, Ch. 112, L. 1991; amd. Sec. 1, Ch. 186, L. 1991.

Compiler's Comments

1991 Amendments: Chapter 112 at end of (2)(b) inserted "required in 53-24-210". Amendment effective March 20, 1991.

Chapter 186 inserted (2)(k) requiring Department to assist in developing chemical dependency education and prevention programs.

Cross-References

Penalty for driving under the influence of alcohol or drugs — completion of alcohol information course, 61-8-714.

Penalty for driving with excessive blood alcohol concentration — completion of alcohol information course, 61-8-722.

53-24-205. Repealed. Sec. 15, Ch. 140, L. 1985.

History: En. 80-2703 by Sec. 4, Ch. 280, L. 1975; R.C.M. 1947, 80-2703.

53-24-206. Administration of financial assistance. (1) The department may apply for and receive grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of chemical dependency or related social problems under laws and rules of the United States, any other state, or any private organization.

(2) The department may cooperate with any other government agency or private organization in programs on chemical dependency or related social problems. In carrying out cooperative programs, the department may make grants of financial assistance to government agencies and private organizations under terms and conditions agreed upon.

(3) (a) In administering proceeds derived from the liquor license tax, the beer license tax, or the wine tax, the department shall distribute those funds appropriated by the legislature. Money that is appropriated for distribution to approved private nonprofit or public programs on a discretionary basis shall be distributed to those programs that can demonstrate that:

(i) the program is achieving the goals and objectives mutually agreed upon by the program and the department; and

(ii) the receipt of additional funds would be justified.

(b) The remainder of the proceeds shall be distributed to the counties for use by approved private nonprofit or public programs. The distribution of these proceeds is statutorily appropriated as provided in 17-7-502 and must be distributed in the following manner:

(i) Eighty-five percent shall be allocated according to the proportion of each county's population to the state's population according to the most recent United States census.

(ii) Fifteen percent shall be allocated according to the proportion of the county's land area to the state's land area.

(c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems of alcoholism.

History: En. Sec. 4, Ch. 303, L. 1969; Sec. 69-6204, R.C.M. 1947; redes. 80-2704 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2704; amd. Sec. 17, Ch. 38, L. 1979; amd. Sec. 4, Ch. 711, L. 1979; amd. Sec. 5, Ch. 406, L. 1983; amd. Sec. 3, Ch. 513, L. 1983; amd. Sec. 32, Ch. 703, L. 1985; amd. Sec. 2, Ch. 402, L. 1987.

53-24-207. Comprehensive program for treatment. (1) The department shall establish a comprehensive and coordinated program for the treatment of chemically dependent persons, intoxicated persons, and family members.

(2) The program shall include:

(a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(b) inpatient treatment;

(c) intermediate treatment;

(d) outpatient treatment; and

(e) follow-up services.

(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under 53-24-301 through 53-24-304.

(4) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities.

History: En. 69-6215 by Sec. 5, Ch. 302, L. 1974; Sec. 69-6215, R.C.M. 1947; redes. 80-2712 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 3, Ch. 414, L. 1977; R.C.M. 1947, 80-2712; amd. Sec. 5, Ch. 711, L. 1979; amd. Sec. 6, Ch. 406, L. 1983.

53-24-208. Facility standards. (1) The department shall establish standards for approved treatment facilities that must be met for a treatment facility to be approved as a public or private treatment facility and fix the fees to be charged for the required inspections. The standards must be adopted by rule and may concern the health standards to be met and standards for the approval of treatment programs for patients.

(2) Facilities applying for approval must demonstrate a local need currently exists for proposed services and that the proposed services do not duplicate existing local services.

(3) The department shall periodically inspect approved public and private treatment facilities at reasonable times and in a reasonable manner.

(4) The department shall maintain a list of approved public and private treatment facilities.

(5) Each approved public and private treatment facility shall, on request, file with the department data, statistics, schedules, and information the department reasonably requires. An approved public or private treatment facility that without good cause fails to furnish any data, statistics, schedules, or information as requested or files fraudulent returns thereof shall be removed from the list of approved treatment facilities.

(6) The department, after holding a hearing in accordance with the Montana Administrative Procedure Act, may suspend, revoke, limit, or restrict an approval or refuse to grant an approval for failure to meet its standards.

(7) A district court may restrain any violation of this section, review any denial, restriction, or revocation of approval, and grant other relief required to enforce its provisions.

(8) Upon petition of the department and after a hearing held upon reasonable notice to the facility, a district court may issue a warrant to the department authorizing it to enter and inspect at reasonable times and examine the books and accounts of any approved public or private treatment facility refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter.

History: En. 69-6216 by Sec. 6, Ch. 302, L. 1974; Sec. 69-6216, R.C.M. 1947; redes. 80-2713 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2713; amd. Sec. 7, Ch. 711, L. 1979; amd. Sec. 1, Ch. 393, L. 1991.

Compiler's Comments

1991 Amendment: In (1), in second sentence near beginning after "standards", inserted "must be adopted by rule and", after "concern" deleted "only", and near end, after "standards", substituted "for the approval of treatment programs for patients" for "of treatment to be afforded patients".

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

One-step licensing — inspection by other department, Title 50, ch. 8.

53-24-209. Rules for acceptance for treatment. The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of chemically dependent persons, intoxicated persons, and family members. In adopting the rules, the department shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient treatment unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each person.

(5) Provision shall be made for a continuum of coordinated treatment services so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

History: En. 69-6217 by Sec. 7, Ch. 302, L. 1974; Sec. 69-6217, R.C.M. 1947; redes. 80-2714 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 4, Ch. 414, L. 1977; R.C.M. 1947, 80-2714; amd. Sec. 7, Ch. 406, L. 1983; amd. Sec. 4, Ch. 513, L. 1983.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

53-24-210. Departmental reports to legislature. The department shall, as provided in 5-11-210, report to the legislature on the status of the implemented chapter. This report or any part thereof may be included as the department's state plan for alcohol abuse and chemical dependency.

History: En. 69-6225 by Sec. 19, Ch. 302, L. 1974; Sec. 69-6225, R.C.M. 1947; amd. and redes. 80-2722 by Sec. 3, Ch. 280, L. 1975; R.C.M. 1947, 80-2722(part); amd. Sec. 8, Ch. 406, L. 1983; amd. Sec. 43, Ch. 112, L. 1991.

Compiler's Comments

1991 Amendment: Near beginning inserted reference to 5-11-210 and after "report to" substituted "the legislature" for "each legislative session". Amendment effective March 20, 1991.

53-24-211. County plan to be submitted to department. (1) Every 4 years each county shall submit to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of chemical dependency. Each county shall also submit annual plan updates that include, at a minimum, allocation to approved programs of revenues generated by taxation on alcoholic beverages.

(2) The plan must have been approved by the board of county commissioners and must contain information regarding existing private and public chemical dependency programs within the county. The plan must also contain information regarding the current and future needs of the county for the treatment, rehabilitation, and prevention of chemical dependency.

(3) The department shall approve or disapprove the countywide plan and annual updates. If the department disapproves a plan or update, the county may submit another plan or update to the department. In distributing funds to approved programs in a county, the department shall give consideration to the county plan.

(4) The department may adopt rules regarding the submission, submission dates, updates, approval, and disapproval of plans and the use of plans by the department in determining the needs of the county for the treatment, rehabilitation, and prevention of chemical dependency. No money may be distributed to a county by the department for the treatment, rehabilitation, and prevention of chemical dependency if the county does not comply with these rules.

History: En. Sec. 8, Ch. 711, L. 1979; amd. Sec. 1, Ch. 499, L. 1981; amd. Sec. 2, Ch. 365, L. 1983; amd. Sec. 9, Ch. 406, L. 1983; amd. Sec. 2, Ch. 393, L. 1991.

Compiler's Comments

1991 Amendment: In (4), at end of first sentence, inserted "and the use of plans by the department in determining the needs of the county for the treatment, rehabilitation, and prevention of chemical dependency".

53-24-212 through 53-24-214 reserved.

53-24-215. Certification of chemical dependency counselors. (1) The department shall grant certification to practice as a certified chemical dependency counselor to any person who successfully completes a competency examination that must include a written exam, an oral exam, and a review of a taped work sample, as defined in rules adopted under 53-24-204.

(2) A person may apply for certification as a certified chemical dependency counselor if he:

(a) has:

(i) received a baccalaureate degree in alcohol and drug studies, psychology, sociology, social work, counseling, or a related field from an accredited college or university;

(ii) received an associate of arts degree in alcohol and drug studies, chemical dependency, or substance abuse from an accredited institution; or

(iii) successfully completed at least 1 year of formalized training in chemical dependency counseling in a program approved by the department or recognized under the laws of another state; and

(b) has completed 2,000 hours of supervised work experience in chemical dependency counseling in a state-approved chemical dependency treatment program, an internship supervised by the college or university and endorsed by the department, or a similar program recognized under the laws of another state. Work experience must include experience in 12 core function areas, including screening, intake, orientation, assessment, treatment planning, individual and group counseling, case management, crisis intervention, client education, referral, recordkeeping, and consultation with other professionals in regard to client treatment and services.

History: En. Sec. 1, Ch. 508, L. 1991.

Compiler's Comments

Applicability: Section 6, Ch. 508, L. 1991, provided: "(1) [Section 1] [53-24-215] does not apply to:

(a) persons who, prior to July 1, 1991, received certification from the department of institutions [now department of corrections and human services] to practice as a certified chemical dependency counselor; or

(b) persons who, prior to March 1, 1991, have:

(i) registered for certification under existing rules; or

(ii) enrolled in a specific chemical dependency degree program.

(2) Individuals referred to in subsection (1)(b) may comply with the department's rules for certification in effect on March 1, 1991, in lieu of certification in accordance with [section 1] [53-24-215], provided they demonstrate continuous effort in the certification or education process. Continuous effort must be defined in rules to be adopted by the department."

Effective Date: Section 7, Ch. 508, L. 1991, provided that this section is effective July 1, 1991.

53-24-216. Suspension or revocation of certification. (1) The department may suspend or revoke the certification of a chemical dependency counselor, according to the procedure contained in 53-24-217, if he has violated the professional ethics standards published by the department. A person may not practice as a certified chemical dependency counselor during the period for which certification is suspended or revoked.

(2) The department may not suspend certification for more than 6 months. Upon termination of the suspension period, the person whose cer-

tification has been suspended shall undergo a department review before resuming practice as a certified chemical dependency counselor.

(3) The department may not revoke a certificate for less than 3 years. Upon termination of the revocation period, the person whose certificate has been revoked may apply to the department for recertification.

History: En. Sec. 2, Ch. 508, L. 1991.

Compiler's Comments

Effective Date: Section 7, Ch. 508, L. 1991, provided that this section is effective July 1, 1991.

53-24-217. Procedure for charging violation of professional ethics standards. (1) A formal breach of professional ethics may be directed to the department. The charges must be made by affidavit, subscribed and sworn to by the person making it, and filed with the department.

(2) The director of the department shall appoint an ethics panel to investigate a formal breach of ethics directed to the department. The panel shall consist of:

(a) three certified chemical dependency counselors;
(b) one employee of the department; and
(c) one member of the public.

(3) The ethics panel has the power to either recommend that the person be cleared of any charges or to recommend suspension or revocation of certification.

History: En. Sec. 3, Ch. 508, L. 1991.

Compiler's Comments

Effective Date: Section 7, Ch. 508, L. 1991, provided that this section is effective July 1, 1991.

Part 3

Treatment of Alcoholics and Intoxicated Persons

53-24-301. Voluntary treatment of alcoholics. (1) An alcoholic may apply directly to an approved public treatment facility for voluntary treatment. If the proposed patient is a minor or an incompetent person, he, a parent, legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the department, the administrator of an approved public treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved public treatment facility, the administrator, subject to departmental rules, shall refer the person to another approved public treatment facility for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved public treatment facility, he shall be encouraged to consent to appropriate outpatient or

intermediate treatment. If it appears to the administrator of the treatment facility that the patient is an alcoholic who requires help, the department shall arrange for assistance in obtaining supportive services and residential facilities.

(4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator of the facility, the department shall make reasonable provisions for his transportation to another facility or to his home. If he has no home, he shall be assisted in obtaining shelter. If he is a minor or an incompetent person, the request for discharge from an inpatient facility shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he was the original applicant.

History: En. 69-6218 by Sec. 8, Ch. 302, L. 1974; Sec. 69-6218, R.C.M. 1947; redes. 80-2715 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2715.

Cross-References

Rule defined — applicability of Montana Administrative Procedure Act, 2-4-102.

Adoption and publication of rules, Title 2, ch. 4, part 3.

Appointment of guardian, 25-5-301.

Guardianship and conservatorship, Title 72, ch. 5.

53-24-302. Involuntary commitment of alcoholics. (1) A person may be committed to the custody of the department by the district court upon the petition of his spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment facility. The petition shall allege that the person is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that he has threatened, attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on another or is incapacitated by alcohol. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within 2 days before submission of the petition unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, a parent or his legal guardian if he is a minor, the administrator in charge of the approved public treatment facility to which he has been committed for emergency care, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought. The person shall have a right to have a licensed physician of his own choosing examine him and testify on his behalf. If he has no funds with which to pay such physician, the reasonable costs of one such examination and testimony shall be paid by the county. The person

shall be present unless the court believes that his presence is likely to be injurious to him. He shall be advised of his right to counsel, and if he is unable to hire his own counsel, the court shall appoint an attorney to represent him at the expense of the county. The court shall examine the person in open court or, if advisable, shall examine the person in chambers. If he refuses an examination by a licensed physician and there is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him to the department for a period of not more than 5 days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination by the department, the court finds that grounds for involuntary commitment have been established by clear and convincing evidence, it shall make an order of commitment to the department. It may not order commitment of a person unless it determines that the department is able to provide adequate and appropriate treatment for him and the treatment is likely to be beneficial.

(5) A person committed under this section shall remain in the custody of the department for treatment for a period of 40 days unless sooner discharged. At the end of the 40-day period, he shall automatically be discharged unless before expiration of the period the department obtains a court order from the district court of the committing district for his recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner discharged. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 90-day period shall be discharged at the expiration of that period unless before expiration of the period the department obtains a court order from the district court of the committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

(7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is sought, his next of kin other than the petitioner, the original petitioner under subsection (1) if different from the petitioner for recommitment, one of his parents or his legal guardian if he is a minor, and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3).

(8) A person committed to the custody of the department for treatment shall be discharged at any time before the end of the period for which he has been committed if either of the following conditions is met:

(a) in case of an alcoholic committed on the grounds of likelihood of infliction of physical harm upon another, that he is no longer in need of treatment or the likelihood no longer exists; or

(b) in case of an alcoholic committed on the grounds of incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(9) The court shall inform the person whose commitment or recommitment is sought of his right to contest the application, be represented by counsel at every stage of any proceedings relating to his commitment and recommitment, and have counsel appointed by the court or provided by the court if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his wishes. The person whose commitment or recommitment is sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) If a private treatment facility agrees with the request of a competent patient or his parent, sibling, adult child, or guardian to accept the patient for treatment, the department may transfer him to the private treatment facility.

(11) A person committed under this section may at any time seek to be discharged from commitment by writ of habeas corpus or other appropriate means.

(12) The venue for proceedings under this section is the place in which person to be committed resides or is present.

History: En. 69-6221 by Sec. 11, Ch. 302, L. 1974; Sec. 69-6221, R.C.M. 1947; redes. 80-2718 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2718; amd. Sec. 1, Ch. 133, L. 1983.

Cross-References

Venue, Title 25, ch. 2.

Physical and mental examination of persons, Rule 35, M.R.Civ.P. (see Title 25, ch. 20).

Habeas corpus, Title 46, ch. 22.

53-24-303. Treatment and services for intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available, he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, are taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect

himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission may not be detained at the facility once he is no longer incapacitated by alcohol or, if he remains incapacitated by alcohol, for more than 48 hours after admission as a patient unless he is committed under 53-24-304. A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin may be notified if the patient consents to such notification.

History: En. 69-6219 by Sec. 9, Ch. 302, L. 1974; Sec. 69-6219, R.C.M. 1947; redes. 80-2716 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 5, Ch. 414, L. 1977; R.C.M. 1947, 80-2716; amd. Sec. 1, Ch. 241, L. 1985.

53-24-304. Emergency commitment of intoxicated persons and persons incapacitated by alcohol. (1) An intoxicated person who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed or a person who is incapacitated by alcohol may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(2) The certifying physician, spouse, guardian, or relative of the person to be committed or any other responsible person may make a written application for commitment under this section directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate stating that he has examined the person sought to be committed within 2 days before the certificate's date and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(3) Upon approval of the application by the administrator of the approved public treatment facility, the person shall be brought to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be detained at the facility to which he was admitted or transferred to another appropriate public or private treatment facility until discharged under subsection (5).

(4) The administrator of an approved public treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(5) When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than 5 days. If a petition for involuntary commitment under 53-24-302 has been filed within the 5 days and the administrator in charge of an approved public treatment facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined, but no longer than 10 days after filing the petition.

(6) A copy of the written application for commitment and of the physician's certificate and a written explanation of the person's right to counsel shall be given to the person by the department within 24 hours after commitment. The department shall provide a reasonable opportunity for the person to consult counsel.

History: En. 69-6220 by Sec. 10, Ch. 302, L. 1974; Sec. 69-6220, R.C.M. 1947; redes. 80-2717 by Sec. 6, Ch. 280, L. 1975; amd. Sec. 51, Ch. 37, L. 1977; amd. Sec. 6, Ch. 414, L. 1977; R.C.M. 1947, 80-2717; amd. Sec. 18, Ch. 38, L. 1979.

53-24-305. Visitation and communication rights of patients. (1) Subject to reasonable rules regarding hours of visitation which the department may adopt, patients in any approved treatment facility shall be granted opportunities for adequate consultation with counsel and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The administrator may adopt reasonable rules regarding the use of telephone by patients in approved treatment facilities.

History: En. 69-6223 by Sec. 13, Ch. 302, L. 1974; Sec. 69-6223, R.C.M. 1947; redes. 80-2720 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2720.

53-24-306. Records of chemically dependent persons, intoxicated persons, and family members. (1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1), the department may make available in accordance with Title 50, chapter 16, part 5, information from patients' records for purposes of research into the causes and treatment of chemical dependency. Information under this subsection shall not be published in a way that discloses patients' names or other identifying information.

History: En. 69-6222 by Sec. 12, Ch. 302, L. 1974; Sec. 69-6222, R.C.M. 1947; redes. 80-2719 by Sec. 6, Ch. 280, L. 1975; R.C.M. 1947, 80-2719; amd. Sec. 10, Ch. 406, L. 1983; amd. Sec. 29, Ch. 632, L. 1987.

Cross-References

Right to know, Art. II, sec. 9, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Public records, Title 2, ch. 6.

CHAPTERS 25 THROUGH 29

RESERVED

CHAPTER 30

CORRECTIONS

Part 1 — Adult Offenders—Montana State Prison

53-30-101. Location and function of prison and women's correctional center.
53-30-102. Qualifications of warden of state prison and warden of women's correctional center.
53-30-103. Repealed.
53-30-104. Punishment of inmates.
53-30-105. Good time allowance.
53-30-106. Excessive inmate population — confinement of inmates in other institutions.
53-30-107. Repealed.
53-30-108. Repealed.
53-30-109. Repealed.
53-30-110. Expense of trial for offenses committed in prison.
53-30-111. Clothing and money furnished on discharge or parole.
53-30-112 through 53-30-130 reserved.
53-30-131. Prison industries training program — purpose and scope.
53-30-132. Inmate participation and status — prison industries training program.
53-30-133. Administration of prison industries training program.
53-30-134 through 53-30-140 reserved.
53-30-141. Extension of limits of confinement.
53-30-142. Escape from extended confinement.
53-30-143 through 53-30-150 reserved.
53-30-151. Prison maintenance by inmates.
53-30-152. Inmates not employees.

Part 2 — Youthful Offenders
(Renumbered by Code Commissioner, 1991)

Part 3 — Community Corrections Act

53-30-301. Short title.
53-30-302. Purpose.
53-30-303. Definitions.
53-30-304 through 53-30-310 reserved.
53-30-311. Community corrections facilities and programs operated by units of local government.
53-30-312. Creation of community corrections boards — membership — appointment — terms — compensation.
53-30-313. Powers and duties of community corrections boards.
53-30-314. Community corrections facilities and programs operated by tribal governments.
53-30-315. Community corrections facilities and programs operated by nongovernmental agencies.
53-30-316 through 53-30-320 reserved.
53-30-321. Authority of judge to utilize community corrections facilities or programs — procedure — restrictions.
53-30-322. Powers and responsibilities of department — rulemaking authority.

53-30-323. Offender payments.
53-30-324. Good time allowance.
53-30-325. Technical assistance and training.
53-30-326. Escape from custody.

Chapter Cross-References

Exchange of offenders under treaty, 53-1-106.

Part 1

Adult Offenders — Montana State Prison

Part Cross-References

Sentences for certain offenses committed in state prison, 46-18-220.

53-30-101. Location and function of prison and women's correctional center. (1) The institution at Deer Lodge is the state prison and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult male criminal offenders.

(2) The institution located in accordance with sections 1 through 7, Chapter 651, Laws of 1991, is the women's correctional center and as its primary function provides facilities for the custody, treatment, training, and rehabilitation of adult female criminal offenders.

History: En. Sec. 24, Ch. 199, L. 1965; R.C.M. 1947, 80-1901; amd. Sec. 9, Ch. 651, L. 1991.

Compiler's Comments

1991 Amendment: Inserted (2) concerning women's correctional center and establishing its function. Amendment effective April 26, 1991.

Preamble: The preamble attached to Ch. 651, L. 1991, provided: "WHEREAS, Article II, section 28, of the Montana Constitution states that laws for the punishment of crime should be founded on the principles of prevention and reformation; and

WHEREAS, the current Women's Correction Center was created in 1982 as a temporary facility; and

WHEREAS, the current Women's Correction Center is a totally inadequate correctional facility consisting of a vacant nurses' dormitory at Warm Springs State Hospital, which provides inadequate security; inadequate medical, vocational, and other educational and rehabilitative services; and inadequate space for the state's rising population of female inmates; and

WHEREAS, population projections by the Department of Institutions [now Department of Corrections and Human Services] estimate 124 female inmates will be incarcerated in a state facility, including prerelease and community-based facilities, by the year 1995; and

WHEREAS, Chapter 518, Laws of 1989, required the Department of Institutions [now Department of Corrections and Human Services], in cooperation with the Governor's Criminal Justice and Corrections Advisory Council, to develop a comprehensive plan for housing female inmates and required submission of the plan to the 52nd Legislature; and

WHEREAS, the Department of Institutions [now Department of Corrections and Human Services] has begun a request for proposal process by which it is soliciting proposals from various Montana communities to construct a women's correctional center; and

WHEREAS, the Legislature believes that decisions concerning the site selection process and the financing and construction of the center must be made with the interests of crime prevention and reformation of female inmates as the state's highest priority and are matters of statewide concern and appropriate for legislative action."

Selection Process for Women's Correctional Facility: Sections 1 through 7, Ch. 651, L. 1991, provided: "Section 1. Legislative findings. The legislature finds that the incarceration and management of female felony offenders is a matter of state responsibility and that the location and design of a women's correctional center providing for these services determines [determine] the proper management of those offenders, so that it is necessary to provide proper guidelines for the location and construction of the women's correctional center.

Section 2. Definitions. As used in [sections 1 through 7], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Department" means the department of institutions [now department of corrections and human services] provided for in 2-15-2301.

(2) "Center" or "women's correctional center" means a women's correctional center with a capacity of approximately 120 beds providing minimum, medium, and maximum security for female inmates.

(3) "Local governmental unit" means a county, city, town, or consolidated government.

(4) "Proposal" means a proposal for the location of the facility, submitted by local governmental units to the department in response to the request for proposals required by [section 3].

Section 3. Request for proposals. (1) The department shall request that proposals be submitted to the department from local governmental units for the siting and community support of a new women's correctional center. The request must:

(a) be made in the form of a request for proposals;

(b) specify January 30, 1991, as the date on which all proposals are to be received by the department; and

(c) contain the information required under subsection (2) and other information determined necessary by the department.

(2) The request for proposal[s] must require that information in the following categories be submitted by a local governmental unit as part of any proposal:

(a) construction site information, including:

(i) the acreage of the site;

(ii) the name and address of the owner or owners and the form of the legal interest in which the site is held;

(iii) how the site may be acquired by the state;

(iv) the configuration and topography of the site;

(v) access to paved public streets and reliable utilities, such as water supply, sewage system, natural gas, electricity, telephone, and refuse disposal;

(vi) compatibility with current local zoning ordinances, as well as any ordinance modifications necessary and the procedure for making those modifications;

(vii) flood hazard information;

(viii) subsurface soils analyses and water table location;

(ix) climate; and

(x) location plan drawings, areawide master plan drawings, and site plan drawings;

(b) service availability information, including:

(i) proximity, stated in the shortest roadway miles on all-weather roads, to 24-hour emergency medical services;

(ii) proximity, stated in the shortest roadway miles on all-weather roads, to 24-hour fire protection services;

(iii) proximity, stated in the shortest roadway miles on all-weather roads, to a certified local law enforcement agency and the level of the agency's capability to respond to emergencies;

(iv) proximity to, stated in the shortest roadway miles on all-weather roads, and availability of interstate transportation services;

(v) proximity to counties committing inmates;

(vi) the adequacy of the court system and legal services;

(vii) availability of motel or hotel accommodations;

(viii) an adequate number of vendors of food, motor fuel, and other supplies;

(ix) an adequate skilled workforce for employment in the center;

(x) availability of affordable housing for the center staff;

(xi) established organizations whose primary missions are specific to the needs of women;

(xii) established organizations that emphasize and are concerned with Native American issues; and

(xiii) availability of employment opportunities for inmates outside the center;

(c) program information, including:

(i) proximity to medical services at a referral hospital with 24-hour emergency room service, including the presence of an attending physician;

(ii) proximity to a hospital offering medical specialties needed by women inmates;

(iii) proximity to dental services;

(iv) proximity to chemical dependency treatment;

(v) proximity to mental health services, including psychiatric care, clinical services, inpatient and outpatient treatment, and programs appropriate to women's needs;

(vi) proximity to vocational education or its programmatic equivalent and a public or private postsecondary educational institution; and

(vii) proximity to licensed foster care and all levels of child care, including registered day care, licensed group care, and out-of-home care;

(d) additional criteria, including:

(i) the strength of community volunteer resources;

(ii) the ability of the community's postsecondary educational programs to provide appropriate interns for the center;

(iii) the receptiveness of the public school district or districts to enrolling the children of center inmates; and

(iv) the ethnic and cultural diversity of the community.

(3) The department may accept in full or partial compliance with the requirements of subsection (2) information provided to the department pursuant to any similar request for proposals process if that information otherwise satisfies the requirements of subsection (2) and was received by the department no later than January 30, 1991. If the criteria included in the department's original request for proposals for which responses were submitted by January 30, 1991, do not include all the criteria required in subsection (2), the department shall request the additional information from the respondents.

Section 4. Site selection committee. (1) Proposals submitted in response to the request for proposals required by [section 3] must be evaluated by a site selection committee. The committee consists of the following persons, whose selection must provide for gender balance on the committee:

(a) one representative of the architecture and engineering division of the department of administration, appointed by the director of the department of administration, to serve in an advisory capacity only;

(b) three representatives of the public, appointed by the governor, none of whom may be a resident of a local governmental unit submitting a proposal;

(c) the corrections division administrator and the warden of the women's correctional center, representing the department of institutions [now department of corrections and human services];

(d) two members of the house of representatives, neither of whom may be a resident of a local governmental unit submitting a proposal, appointed by the speaker of the house;

(e) two members of the senate, neither of whom may be a resident of a local governmental unit submitting a proposal, appointed by the president of the senate;

(f) one representative of established and recognized organizations whose primary mission is specific to women's needs, appointed by the governor; and

(g) one representative of the criminal justice and corrections advisory council, appointed by the governor.

(2) Except as otherwise provided by [sections 1 through 7], the site selection committee shall [must] be compensated, reimbursed, and otherwise governed by the provisions of 2-15-122 regarding advisory councils.

(3) The committee shall meet as often as necessary to perform the duties assigned by [sections 1 through 7]. The committee shall consider, evaluate, and select the location for the women's correctional center according to the procedure and criteria in [section 5].

(4) The committee is attached for administrative purposes only to the department, which shall provide such staff, budgetary, administrative, and clerical services to the committee as the committee or its chairperson requests.

(5) The committee terminates on the date of the announcement of the winning proposal by the director of the department in accordance with [section 7(3)].

Section 5. Site selection procedure and criteria. (1) The site selection committee may not consider a proposal unless the proposal:

(a) is submitted within the time required by the request for proposal[s]; and

(b) contains the construction site information, service availability information, program information, and additional criteria required by [section 3(2)].

(2) The committee shall determine a maximum numeric value for each of the criteria required in [section 3]. Criteria that the committee determines to be of more relative importance must be awarded a greater maximum value. The committee shall rate each proposal considered by it by using a weighted scale process that assigns a numeric score for each criteria and then totals the score for each proposal. The score for each criteria and proposal must be determined by the extent to which each criteria is satisfied, based upon a documented demonstration of:

(a) the proximity, availability, and number of resources satisfying the criteria;

(b) the strength and quality of the resources satisfying the criteria; and

(c) the strength of the community's willingness and ability to provide resources satisfying the criteria.

Section 6. Site visitation and hearings required. The site selection committee shall determine the four proposals with the highest numeric scores. The committee shall eliminate the other proposals from further consideration. As soon as possible after elimination of the other sites, the committee shall conduct on-site reviews of the four remaining candidate sites by conducting both an on-site tour of each of the four candidate sites and holding a public hearing on the subject of the center in the community where each proposed site is located. The purpose of the tour and hearing is to receive information concerning the extent to which each candidate site satisfies the criteria in [section 3] and [section 7(2)]. The hearings must be conducted under procedures determined by the committee, and the committee shall give notice of each hearing by advertisement in a newspaper of general circulation in the county of each candidate site.

Section 7. Site selection. (1) After completing the onsite reviews required by [section 6], the committee shall again score each of the four candidate sites by applying the criteria and scoring method provided in [section 5].

(2) If two or more proposals receive the same total score, the committee shall determine the leading proposal by assigning maximum point values for and scoring those proposals on the following criteria for the community in which the center would be located:

(a) strength of community volunteer resources;

(b) ability of the community's postsecondary educational programs to provide appropriate interns for the facility [center];

(c) the receptiveness of the public school district or districts to enrolling the children of center inmates in their schools; and

(d) the ethnic and cultural diversity of the community.

(3) The center must be located at the site proposed by the local governmental unit whose proposal receives the highest numeric score using the procedure provided in this section. Upon selection of the winning proposal by the committee, the committee will inform the director of the department of its selection. The director shall review the selection process to ensure that the committee has not made an error in process or in fact. If the director determines that an error has been made, he shall remand the recommendation to the committee for further evaluation. The director shall make a public announcement of the committee's selection upon determining that no errors have been made. The committee shall submit its selection to the director of the department no later than 150 days after [the effective date of this act] [effective April 26, 1991]."

Effective Date: Section 12, Ch. 651, L. 1991, provided: "[This act] is effective on passage and approval." Approved April 26, 1991.

Termination: Section 13, Ch. 651, L. 1991, provided: "[Sections 1 through 7] terminate 150 days after passage and approval." Approved April 26, 1991.

Cross-References

Disposition of contraband in correctional institution, 53-1-105.

53-30-102. Qualifications of warden of state prison and warden of women's correctional center. The warden of the state prison and the warden of the women's correctional center shall be persons trained through education and experience in directing a training, rehabilitation, or custodial program in a penal institution.

History: En. Sec. 25, Ch. 199, L. 1965; R.C.M. 1947, 80-1902; amd. Sec. 10, Ch. 651, L. 1991.

Compiler's Comments

1991 Amendment: After "prison" inserted "and the warden of the women's correctional center"; and made minor change in style. Amendment effective April 26, 1991.

53-30-103. Repealed. Sec. 1, Ch. 359, L. 1985.

History: En. Sec. 26, Ch. 199, L. 1965; amd. Sec. 1, Ch. 232, L. 1969; R.C.M. 1947, 80-1903.

53-30-104. Punishment of inmates. No barbarous punishments may be prescribed for an inmate of the state prison, nor shall an inmate, as punishment, be deprived of his normal provision of food while being compelled to work the usual number of hours per day.

History: En. Sec. 27, Ch. 199, L. 1965; R.C.M. 1947, 80-1904.

Cross-References

Rights of the convicted, Art. II, sec. 28, Mont. Const.

53-30-105. Good time allowance. (1) The department of corrections and human services shall adopt rules providing for the granting of good time allowance for inmates employed in any prison work or activity. The good time allowance shall operate as a credit on his sentence as imposed by the court, conditioned upon the inmate's good behavior and compliance with the rules made by the department or the warden. The rules adopted by the department may not grant good time allowance to exceed:

(a) 10 days per month for inmates assigned to maximum, close, and medium I security classifications;

(b) 13 days per month for those classified as medium II and minimum security classifications;

(c) 15 days per month for inmates after having been assigned as medium II or minimum security for an uninterrupted period of 1 year;

(d) 13 days per month for those inmates enrolled in school who successfully complete the course of study or who while so enrolled are released from prison by discharge or parole;

(e) 3 days per month for those inmates participating in self-improvement activities designated by the department.

(2) In the event of an attempted escape by an inmate or a violation of the rules prescribed by the department or warden, the inmate may be punished by the forfeiture of part or all good time allowances. The warden of the state prison shall advise the department of any attempted escape or violation of rules on the part of the inmate. Any punishment by forfeiture of good time allowance must be approved by the department.

(3) A person may not earn good time under this section while he is on probation. A person may earn good time while on parole at the rate of 30 days per month. If the department determines that a person has violated his conditions of parole, it may, in its discretion, deduct good time credit accumulated under this subsection in an amount up to and including all credit accumulated on the date of the violation.

(4) The warden of the state prison may request that all or portions of any previously forfeited good time be restored as a result of subsequent good behavior. Any restoration of good time allowance must be approved by the department.

History: En. Sec. 28, Ch. 199, L. 1965; amd. Sec. 1, Ch. 219, L. 1967; amd. Sec. 1, Ch. 113, L. 1974; amd. Sec. 1, Ch. 312, L. 1975; R.C.M. 1947, 80-1905; amd. Sec. 1, Ch. 588, L. 1981; amd. Sec. 1, Ch. 130, L. 1983; amd. Sec. 1, Ch. 240, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: Chapter 240 in (3) inserted second and third sentences providing for good time credit for persons on parole. Amendment effective July 1, 1991.

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Applicability: Section 2, Ch. 240, L. 1991, provided: "[Section 1] [53-30-105] applies to persons on parole or paroled on or after July 1, 1991."

Cross-References

Granting of parole, Title 46, ch. 23, part 2.

53-30-106. Excessive inmate population — confinement of inmates in other institutions. (1) If the inmate population of a correctional institution or system exceeds the emergency capacity for 30 consecutive days, the director of the department of corrections and human services may declare that the emergency capacity has been exceeded and temporarily stop admissions to the institution or system. The director shall notify each sheriff and district court that new inmates will not be accepted by the department for admission into the institution or system until the inmate population is reduced to 95% or less of the emergency capacity. Persons committed to the department and persons sought to be admitted remain in the department's legal custody but must be kept in a detention center in the jurisdiction holding them. In the event the jurisdiction holding the inmate is at maximum capacity, the inmate may be placed in an available detention center in another jurisdiction. The department shall reimburse that jurisdiction for the cost of detention for the period beyond the normal time of delivery to a correctional institution administered by the department. Reimbursement must be at a rate mutually agreeable to the department and the jurisdiction holding the person. The rate must cover the reasonable costs of the holding jurisdiction. Expenses for medication, medical services, or hospitalization for persons confined in a detention center under this section must be borne by the department.

(2) The department may enter into contracts with the federal government, other states, or the commissioners of counties that have suitable detention centers for confining inmates committed to a correctional institution or system administered by the department, either because a correctional institution or system has exceeded its emergency capacity or because the department has no institution that is adequate for certain inmates.

(3) Within budgetary limits, the department may also enter into contracts with public or private corporations for the confinement of selected inmates if suitable programs have been established.

History: En. Sec. 30, Ch. 199, L. 1965; R.C.M. 1947, 80-1907; amd. Sec. 1, Ch. 304, L. 1981; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 736, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Chapter 736 inserted (1) authorizing Department to declare that emergency capacity of correctional institution or system has been exceeded and to temporarily stop admissions if inmate population exceeds emergency capacity for 30 consecutive days, requiring Department Director to notify Sheriff and District Court that acceptance of new inmates will not resume until population is reduced to 95% or less of emergency capacity, authorizing detention in another jurisdiction, and requiring reimbursement to detaining jurisdiction for cost of detention and expenses for medical or hospitalization services; at beginning of (2) deleted "When the state prison is inadequate to contain an inmate sentenced to confinement there", after "suitable" substituted "detention centers" for "jails", and after "inmates" substituted "committed to a correctional institution or system administered by the department of institutions [changed to department of corrections and human services, pursuant to sec. 1, Ch. 262, L. 1991], either because a correctional institution or system has exceeded its emergency capacity or because the department has no institution that is adequate for certain inmates" for "sentenced to the state prison"; in (3), after "department", inserted "of institutions" (changed to "of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991); and made minor changes in style.

Cross-References

Public contracts generally, Title 18, ch. 1.

53-30-107. Repealed. Sec. 1, Ch. 41, L. 1983.

History: En. Sec. 1, Ch. 221, L. 1969; amd. Sec. 54, Ch. 120, L. 1974; R.C.M. 1947, 80-1909.

53-30-108. Repealed. Sec. 1, Ch. 41, L. 1983.

History: En. Sec. 2, Ch. 221, L. 1969; R.C.M. 1947, 80-1910.

53-30-109. Repealed. Sec. 1, Ch. 41, L. 1983.

History: En. Sec. 3, Ch. 221, L. 1969; R.C.M. 1947, 80-1911.

53-30-110. Expense of trial for offenses committed in prison. Whenever a trial of any person takes place under any of the provisions of 45-7-306 and whenever a prisoner in the state prison is tried for any crime committed therein, the county clerk of the county where such trial is held shall make out a statement of all the costs incurred by the county for the trial of such case and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the department of corrections and human services for its approval. After such approval, the department must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such trial was held.

History: En. Sec. 226, Pen. C. 1895; re-en. Sec. 8228, Rev. C. 1907; re-en. Sec. 10872, R.C.M. 1921; Cal. Pen. C. Sec. 111; re-en. Sec. 10872, R.C.M. 1935; Sec. 94-4209, R.C.M. 1947; redes. 80-1912 and amd. by Sec. 27, Ch. 513, L. 1973; amd. Sec. 47, Ch. 37, L. 1977; R.C.M. 1947, 80-1912; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-30-111. Clothing and money furnished on discharge or parole. The state prison shall furnish suitable clothing to a discharged or paroled inmate. An inmate discharged and delivered to the custody of the federal government or another state shall receive $5; all other discharged or paroled inmates may receive "gate money" in an amount up to $100. The department of corrections and human services may establish rules which allow it to deduct up to one-fourth of an inmate's wages earned under 53-1-301 and hold that money in a special account to be disbursed to the inmate when he is discharged or paroled. This amount shall be in addition to the "gate money".

History: En. Sec. 29, Ch. 199, L. 1965; amd. Sec. 1, Ch. 276, L. 1975; R.C.M. 1947, 80-1906; amd. Sec. 1, Ch. 438, L. 1981; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Purchases exempt from general requirements, 18-4-133.

53-30-112 through 53-30-130 reserved.

53-30-131. Prison industries training program — purpose and scope. (1) In addition to any institutional industry operated at the Montana state prison under Title 53, chapter 1, part 3, the department of corrections and human services shall conduct a prison industries training program.

(2) The purpose of the prison industries training program is to:

(a) provide innovative and progressive inmate reformation and rehabilitation possibilities by exposing inmates to worthwhile training;

(b) prepare inmates for release by providing industries at the prison that utilize their skills, thus providing experience beyond mere training, inculcating inmates with good production and work habits, and providing them with a means to earn money that will be available to them upon release.

(3) The prison industries training program consists of vocational training, on-the-job training, and production experience. The department may contract with public and private vocational education entities to provide this training.

(4) The program may provide training and experience involving cultivation, production, repair, construction, refurbishment, service, and related processes involving personal property, including but not limited to such items as crops, livestock, furniture, office and electrical equipment, and motor vehicles. Such products and services, with the exception of livestock and agricultural products produced from the Montana state prison ranch, may be provided only to state agencies, local government units, school districts, authorities, and other governmental entities.

History: En. Sec. 1, Ch. 3, Sp. L. 1982; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

53-30-132. Inmate participation and status — prison industries training program. (1) An inmate participating in the prison industries training program may be granted a good time allowance, not to exceed 15 days per month, notwithstanding the limits contained in 53-30-105, for outstanding participation in the program as defined by rules adopted by the department of corrections and human services. Such good time allowance has the same effect as a good time allowance granted under 53-30-105, and the provisions of subsections (2) and (3) of 53-30-105 apply to such good time allowance. However, no inmate may receive good time for participation in this program under any other section or rule which would duplicate the good time authorized herein.

(2) While engaged in on-the-job training and production, inmates may be paid a wage commensurate with their production function. Such wages shall be established at a rate that encourages efficient production and effective levels of inmate participation.

(3) Inmates working in the prison industries training program are not employees, either public or private, and employment rights accorded other classes of workers do not apply to such inmates.

(4) Able-bodied persons committed to the Montana state prison as adult offenders shall be required to perform work as provided for by the department of corrections and human services.

History: En. Sec. 1, Ch. 3, Sp. L. 1982; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Employment rights, Title 39, ch. 2.

53-30-133. Administration of prison industries training program. (1) (a) The prison industries training program need not be a self-supporting program. The department of corrections and human services may enter into contracts and establish prices for products or services produced by this program. Within budgetary restrictions, the department shall establish prices that tend to maximize the amount of work available for inmates. All revenue raised through the program may be used only for the program.

(b) State agencies, local governments, school districts, authorities, and other local government entities are encouraged to explore the possibilities of using the prison industries training program. State agencies shall cooperate with the department of corrections and human services in notifying governmental entities within the state of the program and of the services and products that are available.

(2) (a) The department of corrections and human services shall adopt rules implementing this program and shall, as provided in 5-11-210, report to the legislature its continuing plans and recommendations in implementing this program. Any price lists established by the department are exempt from the provisions of Title 2, chapter 4 (the Montana Administrative Procedure Act), but the department may, if it considers it an effective method of dissemination, publish such price lists in the Montana Administrative Register or the Administrative Rules of Montana, or both.

(b) The department of corrections and human services is subject to program audits of the prison industries training program by the legislative auditor.

History: En. Sec. 1, Ch. 3, Sp. L. 1982; amd. Sec. 44, Ch. 112, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendments — Instructions to Code Commissioner: Chapter 112 near beginning of (2)(a) inserted reference to 5-11-210. Amendment effective March 20, 1991.

The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

Legislative Audit Act, Title 5, ch. 13.

53-30-134 through 53-30-140 reserved.

53-30-141. Extension of limits of confinement. (1) The department of corrections and human services may extend the limits of confinement of the Montana state prison for purposes of housing outside the prison fence inmates who:

(a) are employed in ranch or agricultural industry programs; and

(b) have demonstrated sufficient reliability and trustworthiness.

(2) Housing units outside the confines of the prison fence may be created by renovation of existing buildings or by the erection of modular-type units and associated facilities on the prison ranch.

(3) For the purpose of expediting the acquisition and construction of housing units authorized in subsection (2) the department of administration may exempt the project from provisions of Montana law relating to the employment of architects, advertising, labor, and wages. The department of administration need not comply with any state bidding requirements that would preclude a sole source purchase.

History: En. Secs. 1, 2, Ch. 6, Sp. L. 1982; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

1991 Amendment — Instructions to Code Commissioner: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Cross-References

State construction contracts — architects, advertising, labor, and wages, Title 18, ch. 2.

53-30-142. Escape from extended confinement. Purposeful or knowing failure of an inmate to remain within the extended limits of his confinement or to return within the time prescribed by prison officials to the place of confinement designated by the department is an escape punishable as provided in 45-7-306.

History: En. Sec. 3, Ch. 6, Sp. L. 1982.

53-30-143 through 53-30-150 reserved.

53-30-151. Prison maintenance by inmates. An inmate of the Montana state prison may be required to:

(1) keep his own living quarters clean and orderly;

(2) perform general maintenance and repair work on prison grounds and facilities and assist in providing services essential to the administration of the prison, including but not limited to food and laundry services.

History: En. Sec. 1, Ch. 7, Sp. L. 1982.

Cross-References

Use of inmate labor — not bargainable in collective bargaining agreement, 39-31-312.

53-30-152. Inmates not employees. An inmate working pursuant to 53-30-151 is not an employee, either public or private, and employment rights accorded other classes of workers do not apply to such inmates.

History: En. Sec. 2, Ch. 7, Sp. L. 1982.

Cross-References

The employment relationship, Title 39, ch. 2.

Part 2

Youthful Offenders (Renumbered by Code Commissioner, 1991)

Part Compiler's Comments

Sections Renumbered and Repealed:

53-30-201. Repealed. Sec. 25, Ch. 361, L. 1983.
53-30-202. Renumbered 52-5-101.
53-30-203. Renumbered 52-5-102.
53-30-204. Renumbered 52-5-103.
53-30-205. Renumbered 52-5-104.
53-30-206. Renumbered 52-5-105.
53-30-207. Renumbered 52-5-106.
53-30-208. Renumbered 52-5-107.
53-30-209. Renumbered 52-5-108.
53-30-210. Renumbered 52-5-109.
53-30-211. Renumbered 52-5-110.
53-30-212. Renumbered 52-5-111.
53-30-213. Renumbered 52-5-112.
53-30-214. Renumbered 52-5-113.
53-30-215. Renumbered 52-5-114.
53-30-216 through 53-30-224 reserved.
53-30-225. Renumbered 52-5-125.
53-30-226. Renumbered 52-5-126.
53-30-227. Renumbered 52-5-127.
53-30-228. Renumbered 52-5-128.
53-30-229. Renumbered 52-5-129.

Histories of Repealed Sections:

53-30-201. En. Sec. 20, Ch. 320, L. 1967; R.C.M. 1947, 80-1704.

Part 3

Community Corrections Act

53-30-301. Short title. This part may be cited as the "Montana Community Corrections Act".

History: En. Sec. 1, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-302. Purpose. It is the purpose of this part to:

(1) encourage the development of community corrections facilities and programs by units of local government, tribal governments, and nongovernmental agencies;

(2) reduce court commitments to the state penitentiary through diversion of low-risk, nonviolent felony offenders to community corrections facilities and programs;

(3) provide a procedure by which units of local government, tribal governments, and nongovernmental agencies may provide corrections services to the sentencing courts; and

(4) include citizen participation in the policymaking and program planning related to community corrections facilities and programs through the formation of local community corrections boards.

History: En. Sec. 2, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-303. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Community corrections board" means a community corrections board as provided in 53-30-312.

(2) "Community corrections facility or program" means a community-based or community-oriented facility or program, other than a jail, that:

(a) is operated by a unit of local government, a tribal government, or a nongovernmental agency; and

(b) provides programs and services to aid offenders in:

(i) obtaining and holding regular employment;

(ii) enrolling in and maintaining academic courses;

(iii) participating in vocational training programs;

(iv) utilizing the resources of the community to meet their personal and family needs;

(v) obtaining the benefits of specialized treatment services that exist within the community; and

(vi) paying restitution or performing community restitution to crime victims.

(3) "Crime of violence" means:

(a) an offense in which a person uses or possesses and threatens the use of a deadly weapon during the commission or attempted commission of an offense, including felony assault, kidnapping, aggravated kidnapping, robbery, arson, burglary, aggravated burglary, escape, or intimidation;

(b) an offense, other than an offense in which negligence is an element of the offense, in which the person causes serious bodily injury or death to a person other than himself during the commission or attempted commission of an offense; or

(c) any sexual offense in which the offender causes bodily injury to the victim or uses threat, intimidation, or force against the victim.

(4) "Department" means the department of corrections and human services created in 2-15-2301.

(5) "Nongovernmental agency" means a person, private nonprofit agency, corporation, association, labor organization, or other nongovernmental entity.

(6) "Nonviolent felony offender" means a person who has committed a felony other than a crime of violence.

(7) "Offender" means a person who has entered a plea of guilty or has been convicted of a felony. The term excludes a person who has committed a crime of violence.

(8) "Tribal government" means a federally recognized Indian tribe within the state of Montana.

(9) "Unit of local government" means a county, city, town, or city-county consolidated government.

History: En. Sec. 3, Ch. 554, L. 1991; amd. Sec. 1, Ch. 262, L. 1991.

Compiler's Comments

Name Change: The Code Commissioner changed "department of institutions" to "department of corrections and human services", pursuant to sec. 1, Ch. 262, L. 1991, directing the Code Commissioner to make the change wherever necessary in the Montana Code Annotated. Amendment effective July 1, 1991.

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-304 through 53-30-310 reserved.

53-30-311. Community corrections facilities and programs operated by units of local government. (1) A unit of local government may establish, maintain, and operate any community corrections facilities and programs that it considers necessary to serve its own needs or the needs of offenders who are sentenced to the facility or program by a judge as provided in 53-30-321.

(2) A unit of local government may enter into a contract or agreement with the department for the purpose of providing community corrections facilities and programs for offenders.

History: En. Sec. 4, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-312. Creation of community corrections boards — membership — appointment — terms — compensation. (1) A unit of local government, the governing bodies of two or more units of local government, or a tribal government may establish a community corrections board.

(2) A community corrections board consists of nine members, must, when possible, be gender-balanced and have racial parity, and must be appointed as follows:

(a) one local law enforcement officer;

(b) one county attorney;

(c) one district court judge;

(d) one probation and parole officer;

(e) one local private employer or representative of the department of labor and industry;

(f) one mental health professional;

(g) one person representing local or tribal drug and alcohol treatment programs; and

(h) two members of the public.

(3) Members of a community corrections board must be nominated by representatives of units of local government or a tribal government and appointed by the district court judges or the tribal judges in the judicial district in which community corrections facilities or programs are established.

(4) Members of a community corrections board shall serve for a term of 4 years.

(5) Members of a community corrections board shall serve without compensation except as otherwise decided by the units of local government or a tribal government.

History: En. Sec. 5, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-313. Powers and duties of community corrections boards. (1) A community corrections board may establish and enforce standards for:

(a) the operation of community corrections facilities and programs operated by the unit of local government or a tribal government served by the community corrections board; and

(b) the conduct of offenders placed in local community corrections facilities and programs.

(2) The community corrections board, together with the department and the judicial district, shall establish procedures for screening offenders who are to be placed in the community corrections facility or program. The screening must take into account the aptitude, attitude, and social and occupational skills of the offender and the risk of harm the offender may present to himself and others.

(3) A community corrections board may accept, reject, or reject after acceptance the placement of any offender in the community corrections facility or program. If an offender is rejected by the community corrections board after initial acceptance, the offender must be remanded to the custody of the sheriff of the county in which the facility or program is located. The community corrections board shall notify in writing the sentencing judge who, after considering the board's reasons for rejection, shall appropriately modify the sentencing order.

History: En. Sec. 6, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-314. Community corrections facilities and programs operated by tribal governments. (1) A tribal government may establish, maintain, and operate a community corrections facility or program to serve the needs of offenders who are sentenced to the facility or program by a judge as provided in 53-30-321.

(2) A tribal government may enter into an agreement with the department, pursuant to Title 18, chapter 11, part 1, for the purpose of providing

community corrections facilities or programs for offenders. The agreement must provide for strict accountability procedures and practices for the conduct and supervision of offenders assigned or sentenced to a facility or program operated by a tribal government.

(3) A tribal government operating a community corrections facility or program may accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant to an agreement with a unit of local government, a nongovernmental agency, or a judicial district. If an offender is rejected by the tribal government after initial appearance and the offender is a court referral, the offender must be remanded to the custody of the sheriff of the county in which the facility or program is located. The tribal government shall notify in writing the sentencing judge who, after considering the tribal government's reasons for rejection, shall appropriately modify the sentencing order.

History: En. Sec. 7, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-315. Community corrections facilities and programs operated by nongovernmental agencies. (1) Except as provided in subsection (2), a nongovernmental agency may establish, maintain, and operate a community corrections facility or program to serve the needs of offenders who are sentenced to the facility or program by a judge as provided in 53-30-321.

(2) A nongovernmental agency may not establish a community corrections facility or program unless approved by the local community corrections board in a local government or tribal government that has established a community corrections board.

(3) A nongovernmental agency may enter into a contract or agreement with the department for the purpose of providing community corrections facilities or programs for offenders. The contract or agreement must provide for strict accountability procedures and practices for the conduct and supervision of offenders assigned or sentenced to a facility or program operated by a nongovernmental agency.

(4) A nongovernmental agency operating a community corrections facility or program may accept, reject, or reject after acceptance the placement of any offender in the facility or program pursuant to a contract or agreement with a unit of local government, a tribal government, or a judicial district. If an offender is rejected by the nongovernmental agency after initial acceptance and the offender is a court referral, the offender must be remanded to the custody of the sheriff of the county in which the facility or program is located. The nongovernmental agency shall notify in writing the sentencing judge who, after considering the agency's reasons for rejection, shall appropriately modify the sentencing order.

History: En. Sec. 8, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-316 through 53-30-320 reserved.

53-30-321. Authority of judge to utilize community corrections facilities or programs — procedure — restrictions. (1) Subject to the restrictions contained in subsection (3), a judge may order placement of a nonviolent felony offender in a community corrections facility or program operated by a unit of local government, a tribal government, or a nongovernmental agency. If a judge orders placement of an offender in a community corrections facility or program, the judge shall indicate in the sentencing order that the offender would have been sentenced to prison if the community corrections facility or program had not been available.

(2) Placement of an offender in a community corrections facility or program may be ordered only if:

(a) the community corrections facility or program is operated by a unit of local government, a tribal government, or a nongovernmental agency that has entered into a contract or agreement with the department to provide community corrections services for offenders; and

(b) funding for the placement is available.

(3) A judge may not order placement of an offender in a residential community corrections facility or program for a period exceeding 1 year. After completing the residential community corrections portion of his sentence, an offender shall serve the remainder of his sentence under normal probation supervision, if applicable.

(4) An offender is not eligible for parole while serving a sentence in a community corrections facility or program.

(5) The probation and parole officers for the judicial district shall include in their presentence report to the sentencing judge recommendations for utilization of a community correctional facility or program that has been approved for use by the judicial district.

History: En. Sec. 9, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-322. Powers and responsibilities of department — rulemaking authority. The department shall:

(1) with the active and full participation of the local community corrections board, establish minimum standards for the operation of community corrections facilities and programs operated by a unit of local government, a tribal government, or a nongovernmental agency that has entered into a contract or agreement with the department to provide services for offenders;

(2) review and evaluate all community corrections facilities and programs established under this part, subject to the requirements established in section 14, Chapter 554, Laws of 1991;

(3) prescribe accounting and reporting standards for all units of local government, tribal governments, and nongovernmental agencies that have entered into a contract or agreement with the department;

(4) reimburse units of local government, tribal governments, or nongovernmental agencies for community correctional services at a rate to be negotiated by the department;

(5) adopt rules necessary to carry out the provisions of this part.

History: En. Sec. 10, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-323. Offender payments. (1) An offender placed in a community corrections facility or program under this part shall execute a written contract or agreement with the director of the facility or program, setting forth the terms and conditions for placement in the facility or program. The contract or agreement may provide that a portion of any money received from employment of the offender be set aside for payment of the following expenses in order of the priority in which they appear below:

(a) reimbursement to the community corrections facility or program for a portion of the cost of the room and board provided at the facility or program. The reimbursement rate must be reasonable, based on the offender's employment status and other financial obligations. However, the charges for room and board may not exceed 20% of the offender's net employment income.

(b) victim restitution ordered by the sentencing court, which may not exceed 20% of the offender's net employment income;

(c) deposits to a savings account or fund to be used by the offender for general living expenses following his release from the community corrections facility or program; and

(d) payment of family support.

(2) In a community corrections facility or program, the offender has the primary obligation to obtain employment, but the department of labor and industry shall provide assistance to the offender in obtaining suitable employment.

History: En. Sec. 11, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-324. Good time allowance. If an offender successfully completes the residential community corrections portion of his sentence, he accrues a good time allowance at a rate of 1 day of good time for each day served in the facility or program. The good time allowance operates as a credit on the remainder of his sentence.

History: En. Sec. 12, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-325. Technical assistance and training. The department shall contract with qualified community corrections specialists to provide necessary technical assistance and training to judicial districts and corrections boards.

History: En. Sec. 13, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

53-30-326. Escape from custody. An offender is guilty of escape from official detention and shall be punished as provided in 45-7-306 if, without proper authorization, he:

(1) fails to remain within the extended limits of his confinement or fails to return within the time specified to a community corrections facility or program to which he has been assigned, sentenced, or transferred; or

(2) leaves his place of employment or neglects or fails to return to the community corrections facility or program after being specifically ordered to do so.

History: En. Sec. 15, Ch. 554, L. 1991.

Compiler's Comments

Effective Date: Section 19, Ch. 554, L. 1991, provided: "[This act] is effective July 1, 1991."

TITLES 54 - 59

RESERVED

DOES NOT
CIRCULATE

State Law Library Of Montana
KFM9030 1991 .A2
Montana code annotated : adopted by chap
c. 2 v. 8
3 0000 00011 4334